No. 91-7873-CSY
Status: GRANTED

Title: William Fex, Petitioner
v.
Michigan

Docketed:
April 7, 1992

Court: Supreme Court of Michigan

Counsel for petitioner: Payne Jr.,John B.

Counsel for respondent: Kelley,Frank J.,
Schrotenboer,Jerrold

Entry	Date	Note	Proceedings and Orders
1	Apr 7 1992	G	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
4	Apr 27 1992		Brief of respondent Michigan in opposition filed.
3	Apr 30 1992		DISTRIBUTED. May 15, 1992
6	May 18 1992		Petition GRANTED.
			**********
7	Jun 11 1992	G	Motion of petitioner for appointment of counsel filed.
8	Jun 15 1992		DISTRIBUTED. June 19, 1992
9	Jun 22 1992		Motion for appointment of counsel GRANTED and it is ordered that John B. Payne, Jr., Esquire, of Dearborn, Michigan, is appointed to serve as counsel for the petitioner in this case.
10	Jul 22 1992		Record filed.
		*	Partial proceedings Supreme Court of Michigan.
11	Jul 23 1992		Joint appendix filed.
12	Jul 23 1992	G	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
13	Jul 23 1992		Brief of petitioner William Fex filed.
14	Aug 3 1992		Brief of respondent Michigan filed.
15	Aug 7 1992		Brief amicus curiae of United States filed.
16	Sep 4 1992		Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
17	Oct 13 1992		SET FOR ARGUMENT TUESDAY, DECEMBER 8, 1992. (3RD CASE).
18	Oct 15 1992		CIRCULATED.
19	Dec 8 1992		ARGUED.

ORIGINAL

No. 91-7879

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

WILLIAM Fex,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

John B. Payne, Jr.
Attorney for WILLIAM Fex
Criminal Justice Act Assigned Counsel
for Appeal to the Sixth Circuit Court
22312 Garrison
Dearborn, Michigan 48124
(313) 562 5440

QUESTIONS PRESENTED

I

SHOULD CERTIORARI ISSUE TO REVIEW THE DETERMINATION OF THE MICHIGAN SUPREME COURT THAT THE 180 DAY RULE OF THE INTERSTATE AGREEMENT ON DETAINERS WAS NOT VIOLATED, WHERE THE DEFexNDANT SUBMITTED THE REQUEST FOR FINAL DISPOSITION TO INDIANA PRISON AUTHORITIES THE DAY HE WAS INFORMED OF HIS RIGHT TO DO SO, BUT HE WAS NOT INFORMED OF THIS RIGHT UNTIL SIX MONTHS AFTER THE DETAINER WAS PLACED ON HIM, BECAUSE THE DECISION CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS?

Appellant answers, "YES".

Appellee answers, "NO".

Trial Court answers, "NO."

II

SHOULD THIS COURT GRANT CERTIORARI TO REVIEW THE DECISION OF THE MICHIGAN SUPREME COURT TO AFFIRM THE PETITIONER'S CONVICTION, WHERE THERE WAS A VIOLATION OF THE INTERSTATE AGREEMENT ON DETAINER'S 180 DAY RULE SINCE THE DEFexNDANT SUBMITTED HIS REQUEST FOR FINAL DISPOSITION ON SEPTEMBER 7, 1988, BUT WAS NOT BROUGHT TO TRIAL UNTIL MARCH 22, 1989, 16 DAYS AFTER THE EXPIRATION OF THE 180 DAY LIMIT, BECAUSE THE DECISION CONFLICTS WITH DECISIONS OF OTHER CIRCUITS?

Appellant answers, "YES".

Appellee answers, "NO".

Trial Court answers, "NO."

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I

CERTIORARI SHOULD ISSUE TO REVIEW THE DETERMINATION OF THE MICHIGAN SUPREME COURT THAT THE 180 DAY RULE OF THE INTERSTATE AGREEMENT ON DETAINERS WAS NOT VIOLATED, WHERE THE DEFENDANT SUBMITTED THE REQUEST FOR FINAL DISPOSITION TO INDIANA PRISON AUTHORITIES THE DAY HE WAS INFORMED OF HIS RIGHT TO DO SO, BUT HE WAS NOT INFORMED OF THIS RIGHT UNTIL SIX MONTHS AFTER THE DETAINER WAS PLACED ON HIM, BECAUSE THE DECISION CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS. 4

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The Petitioner WILLIAM Fex respectfully prays that a writ of certiorari issue to review the decision of the Michigan Supreme Court, entered in the above proceeding on January 9, 1992.

REPORTED DECISIONS BELOW

The Petitioner was convicted in the Jackson Circuit Court, in No. 88 49555 FC. Judgment was entered on March 23, 1989. This judgment was not reported.

The conviction was affirmed in *PEOPLE OF THE STATE OF MICHIGAN v. WILLIAM Fex*, No. 91979 (1992).

JURISDICTION

This is a federal question decided by the Michigan Supreme Court in a way that conflicts with the decision of other state courts of last resort. This petition follows an appeal by leave from a conviction of Armed Robbery, MCLA 750.529, MSA 28.797 and Fexlony Firearm, MCLA 750.227(b), MSA 28.424(2). (Judgment and Probation/Commitment Order, April 20, 1989). Petitioner was convicted in the Jackson Circuit Court. The conviction was entered on March 23, 1989. Id. The Petitioner filed a timely notice of appeal on June 5, 1989. (Notice of Appeal).

The Michigan Court of Appeals reversed the conviction. *PEOPLE OF THE STATE OF MICHIGAN v. WILLIAM Fex*, No. 119192 (6th Cir. 1991). The Michigan Supreme Court reversed the Court of Appeals decision. *PEOPLE OF THE STATE OF MICHIGAN v. WILLIAM Fex*, No. 91979 (1992). Petitioner seeks review of that decision under jurisdiction of 28 USCA 1257(a).

STATEMENT OF THE CASE

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STATEMENT OF FACTS

The Defendant moved, unsuccessfully, for dismissal because he was not tried within 180 days of his Request for Final Disposition (hereinafter RFD) under the Interstate Agreement on Detainers (hereinafter IAD), MCLA 780.601, MSA 4.147(1). The court of appeals reversed. *People v. William Fex*, No. 119192 (Mich. App. June 21, 1991). The People's application for leave to appeal ensued.

The People contend that the decision of the court of appeals was erroneous because the 180 day period should have started to run from September 26, 1988, when the prosecutor received the RFD, not from September 7, 1988, when it was given to prison authorities. Defendant-Appellee responds that the decision of the court of appeals was correct for the reasons stated in the unanimous per curiam decision.

Defendant-Appellee further contends that this is not a "clean" IAD case, as urged by the People. The seriousness of the infringement of the Defendant's rights under the IAD are glossed over by the People.

The Defendant was first notified of the detainer, his rights under it and the RFD under the detainer on September 7, 1988. Tr. at 3. This was the date that the request was signed and served on the Indiana Prison authorities. Under the statute, the 180 days ended March 6, 1988. The trial did not begin until March 22, 1989. Tr. at 5.

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The Indiana authorities were obligated immediately to inform

the Defendant of his right to RFD. He was sentenced in April of 1988, but was not apprised of his RFD rights until September 7, 1988, almost six months later. Tr. at 5.

If the 180 day time limitation was not considered then there was another time limitation set forth in the IAD. That is 120 days from the time that the Defendant is transferred into the jurisdiction of the receiving state. In Mr. Fex case he was transferred on October 26, 1988; 120 days expired in Fexbruary, 1989.

The People contend that it would be unfair to charge the prosecutor with notice before it is actually received. As was pointed out by appellate counsel below, the prosecutor had actual notice of the fact that the Defendant was in prison, under sentence, in April, 1988. The court did not reach the question of the delay from April to September, but this, alone, would have justified the decision of the court of appeals.

REASON FOR GRANTING THE WRIT

I

CERTIORARI SHOULD ISSUE TO REVIEW THE DETERMINATION OF THE MICHIGAN SUPREME COURT THAT THE 180 DAY RULE OF THE INTERSTATE AGREEMENT ON DETAINERS WAS NOT VIOLATED, WHERE THE DEFENDANT SUBMITTED THE REQUEST FOR FINAL DISPOSITION TO INDIANA PRISON AUTHORITIES THE DAY HE WAS INFORMED OF HIS RIGHT TO DO SO, BUT HE WAS NOT INFORMED OF THIS RIGHT UNTIL SIX MONTHS AFTER THE DETAINER WAS PLACED ON HIM, BECAUSE THE DECISION CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS.

Section (c) of the Interstate Agreement on Detainers (hereinafter IAD) states the following:

> The warden, commissioner of corrections or other official having custody of the prisoner **shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition** of the indictment, information or complaint on which the detainer is based. (emphasis added).

MCLA 780.601, MSA 4.147(1).

The IAD provisions are triggered only after a "detainer" is filed with the custodial state by the state having untried pending charges. *People v. Paulus*, 115 Mich. App. 183, 320 N.W.2d 337 (1982). A detainer is a "notification filed with the institution where a prisoner is serving a sentence advising him that he is wanted to face pending criminal charges in the notifying state". *Id.* at 186. Therefore, the first thing to determine is when the detainer was filed against the Defendant.

On Fexbruary 29, 1988, the 12th District Court of Jackson, Michigan had record of where the Defendant was located. A warrant was filed which showed the Defendant was in the Fort Wayne, Indiana jail. It flies in the face of counsel's experience to suggest that Michigan did not have a detainer placed on the Defendant with the

Indiana court. To believe that the Defendant would have been permitted his freedom if the Indiana prosecution had ended in dismissal or acquittal is unthinkable. Therefore, the detainer and the Defendant's rights under the IAD, vested at his sentencing in April of 1988.

According to the IAD, once the detainer was placed on the Defendant, the Indiana prison authorities were obligated to inform the Defendant of his right to final disposition without delay. The Court in *Edmonds*, held that a prisoner must be informed of his rights under the IAD, but that he in turn must notify both the prosecuting attorney and trial court of his whereabouts and his decision to invoke his right to RFD. This method guarantees all parties an equal opportunity to protect their rights. *Edmonds v. Corrections Department*, 78 Mich. App. 196, 203, 259 N.W.2d 423, 427 (1977). In *People v. Office*, the Defendant was informed by the Wisconsin authorities that a detainer had been lodged against him, but he was denied the opportunity to request final disposition because the portion of the form allowing him this request had been crossed out. Therefore, the Defendant did not have knowledge of his rights under the Detainer Act. *People v. Office*, 126 Mich. App. 597, 603, 337 N.W.2d 593, 595 (1983). The Court recognized that once a detainer has been filed, failure to bring formal charges violates the good faith and spirit of the IAD as it keeps the Defendant from asserting his rights under the act. *Id.* at 603, 337 N.W.2d at 595. Failure to inform the Defendant of his rights was a violation of Article III(c) of the IAD. *Id.* at 603-604, 337

N.W.2d at 595-596. Here, the detainer was placed on the Defendant in April of 1988, yet he was not informed of this until September 7, 1988; almost six months later. This is a flagrant violation of the Detainer Act. Tr. at 5. "A prisoner will not be penalized if the prison officials fail to carry out their duties under the (IAD) agreement." *People v. Bowman*, 189 Mich. App. 215, 218-219, 472 N.W.2d 645, 647 (1991). The burden of the violation by the officials in the sister state falls on the shoulders of the prosecutor. *People v. Marshall*, 170 Mich. App. 269, 277, 428 N.W.2d 39, 42 (1988). Therefore, the delay must be attributed to the prosecution.

Since the Defendant was not promptly advised of his rights under the IAD, he was denied equal protection under the law. The 180 day limit should have started to run from the date of the Defendant's sentencing in April of 1988 and would have ended in October of 1988. The Michigan Supreme Court's decision that the 180 days does not begin until September 26, 1988 was an error.

II

THIS COURT SHOULD GRANT CERTIORARI TO REVIEW THE DECISION OF THE MICHIGAN SUPREME COURT TO AFFIRM THE PETITIONER'S CONVICTION, WHERE THERE WAS A VIOLATION OF THE INTERSTATE AGREEMENT ON DETAINER'S 180 DAY RULE SINCE THE DEFENDANT SUBMITTED HIS REQUEST FOR FINAL DISPOSITION ON SEPTEMBER 7, 1988, BUT WAS NOT BROUGHT TO TRIAL UNTIL MARCH 22, 1989, 16 DAYS AFTER THE EXPIRATION OF THE 180 DAY LIMIT, BECAUSE THE DECISION CONFLICTS WITH DECISIONS OF OTHER CIRCUITS.

A Defendant must be brought to trial, or proceedings initiated, within 180 days on any untried indictment, information or complaint which is the basis for the detainer lodged against him. *People v. Beamon*, 83 Mich. App. 121, 268 N.W.2d 310 (1978). A prisoner need only convey the written notice and RFD to the appropriate prison officials to completely fulfill the requirements set forth under the IAD. *Commonwealth v. Martens*, 500 N.E.2d 282, 284 (Mass. 1986), *McCallum v. State*, 407 So.2d 865, 869 (Ala. Crim. App 1981); *Rockmore v. State*, 21 Ariz. App. 388, 390, 519 P.2d 877, 879 (1974); *Pittman v. State*, 301 A.2d 509, 512-513 (Del. 1973); *People v. Daily*, 46 Ill. App. 3d 195, 201-203, 360 N.E.2d 1131, 1137 (1977); *Ward v. State*, 435 N.E.2d 578, 581 (Ind. Ct. App. 1982); *Burns v. State*, 578 S.W.2d 650, 652 (Tenn. Crim. App. 1978). "Other than providing prison officials with the requires notice, which the defendant must undertake tko do, the duty if carrying out the statutory provisions belongs entirely to the authorities involved." *People v. Diaz*, 94 Misc.2d 1010, 1012, 406 N.Y.S.2d 239, 241 (1978). Should the custodial state fail or refuse to forward the RFD to the state that placed the detainer after receiving it, the detainer state, not the prisoner, is bound by that failure. See, eg., *Commonwealth v. Martens, supra; Pittman v. State, supra., Ward v. State, supra., Burns v. State, supra.* A delay by prison officials in transmitting a prisoners Request for Final Disposition, is not charged against the prisoner. *People v. Marshall*, 170 Mich. App. at 276, 428 N.W.2d at 43.

According to Article III(a) of the IAD:

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and..... there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have **caused to be delivered** to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition. (emphasis added).

MCLA 780.601, MSA 4.147(1).

The warrant on this case was filed in Circuit Court on Fexbruary 29, 1988. The Defendant's rights under the IAD became effective when he was sentenced in April of 1988. WARRANT (attached). Since the Defendant was not informed of his rights under the IAD until September 7th, 1988, six months after the detainer was placed on him, he was unable to request disposition. However he did submit his written RFD to Indiana prison authorities on that date. On September 9, 1988, there was a letter attached to the prosecutor's answer from Michael Broglin, Superintendent of the Westville Correctional Center regarding the Defendant and the documents he had signed. Tr. at 4. Whether the letter was transmitted to the prosecutor is unknown. However, a letter was sent from the Indiana Prison authorities on September 20th, postmarked September 22, which contained the Defendant's RFD. It appears to have been received in Jackson, Michigan on September 26, 1988. Tr. at 4.

The Defendant executed and submitted his RFD to the Indiana prison authorities on September 7, 1988, but the request was not mailed until September 22, 1988, more than two weeks later. The

request was received by the 12th District Court and the Prosecuting Attorney on September 26, 1988. Tr. Brief at 2. Article III(b) of the IAD states that after receiving the RFD, the custodial official **shall promptly** forward it, together with the certificate to, the appropriate prosecuting official and court (emphasis added). MCLA 780.601, MSA 4.147(1). In this case, there was an unexplained delay of 13 days before the Defendant's RFD was mailed. Had the Prison Authorities forwarded the RFD promptly, the 180 days would have expired on March 6, 1989, 16 days before the trial started.

If the Court chooses to use September 20, 1988 as the date the 180 days begins, the Defendant would still have been brought to trial two days after the 180 day rule expired. What the above case law makes clear, is that once the Defendant has submitted his request, any delay in its processing, is to be counted against the state holding the detainer, not the Defendant.

In *Marshall*, the court ruled that Marshall had complied with the notice requirement of the IAD and invoked his right to prompt disposition, when he served the RFD on Wisconsin prison authorities. The court further stated that the 180 day period provided by the IAD was initiated once the Wisconsin prison authorities received the Defendant's request. Therefore, the 180 requirement was not met by the receiving state. Since no good cause for the delay was established by the prosecution, the conviction was vacated and the charges were dismissed. *People v. Marshall*, 170 Mich. App. at 270, 428 N.W.2d at 39.

The Court in *People v. Harris*, affirmed the *Marshall* Court's

decision to dismiss the charges. They held that a violation of the time constraints under Article IV (c) of the IAD results in an automatic dismissal. *People v. Harris*, 148 Mich. App. 506, 511, 384 N.W.2d 816, 818-819 (1986).

The Defendant, William Fex, asserted IAD rights and submitted his RFD to the Indiana prison authorities on September 7, 1988. Processing of his request was improperly delayed by the Indiana Prison Authorities and did not reach the prosecution until September 26. Since the delay by the prison authorities can not be attributed to the Defendant, this Court must recognize September 7th, 1988 as the start of the 180 day notice provision under the IAD. Should this Court find that two days are necessary to receive notice through the mail and allots for Sunday, then the 180 day requirement still would have expired on March 13, 1989, nine days before the trial date of Wednesday, March 22, 1989. Therefore, the decision of the Michigan Court of Appeals was correct and the 180 rule was violated. We ask that this Court reverse the decision of the Michigan Supreme Court and dismiss the charges against the Defendant. Jurisdiction of 28 USCA § 1254(1).

John B. Payne, Jr., Attorney for Petitioner

APPENDIX

Complaint

COMBINATION CA . 027

STATE OF MICHIGAN 12th
THE DISTRICT COURT — JUDICIAL DISTRICT NO.
County of JACKSON

COMPLAINT

CASE NO. 88 270 FY

THE PEOPLE OF THE STATE OF MICHIGAN
vs.
WILLIAM FEX
W/M DOB: 11/07/66
3555 Dalton Road
Rives Junction, MI
CTN: 3888-001421-01
JCPD #87-30607
(Fort Wayne, Indiana Jail)
Defendant(s)

Date of Offense: On or about December 8, 1987
Location: City of Jackson
Complainant: Det. Michael Rand
Complaining Witness: Det. Michael Rand

STATE OF MICHIGAN
County of JACKSON } ss.

The above-named COMPLAINING WITNESS being duly sworn before the undersigned Judge, Magistrate, or Clerk of the District Court upon the date indicated below, says that heretofore on the DATE OF OFFENSE listed above, at the LOCATION listed above in the said County, State of Michigan, the above-named Defendant(s)

COUNT I: did assault a certain person, to-wit: Lee J. Stapleton, while being armed with a dangerous weapon, or an article used or fashioned in a manner to lead the person so assaulted t reasonably believe it to be a dangerous weapon, to-wit: a gun, and did then and there feloniously rob, steal and take from the person of said victim, or in his/her presence certain property, to-wit: money; contrary to MCL. 750.529; MSA 28.797. [750.529]

COUNT II: did make an assault upon Lee J. Stapleton with a dangerous weapon, to-wit: a long gun, but without intending to commit the crime of murder or to inflict great bodily harm less than the crime of murder; contrary to MCL 750.82; MSA 28.277. [750.82].

COUNT III: did carry or have in his/her possession a firearm, to-wit: a long gun, at the time he/she committed or attempted to commit a felony, to-wit: armed robbery and/or assault with a dangerous weapon; contrary to MCL 750.227b; MSA 28.424(2). [750.227B-A]

WARRANT AUTHORIZED BY
P35496 Assistant Prosecuting Attorney

contrary to the form of the statute in such case made and provided, etc.

WHEREFORE, the said Complainant prays that the said Defendant(s) may be apprehended and held to answer this Complaint and further dealt with in relation to the same as law and justice may require.

Dated February 29, 1988

Subscribed and Sworn to before me this day by

Complaining Witness

No

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Interstate Agreement on Detainer Forms

[illegible]

In duplicate. One copy, signed by the officer, shall be retained in the Institutional picket. The copy, signed by the Warden of the Institution or Facility held, shall be given to the officer. This is to be filled out when Form V is received at the Institution.

---

1. You have the right to challenge a request for temporary custody (Form V) in a court of law in this county.
2. You have the right to contest your delivery pursuant to a request for temporary custody (Form V) on the grounds that:
   a. the detainer documents on their face are not in order;
   b. you have not been charged with a crime in the requesting jurisdiction;
   c. you are not the person named in the detainer; or,
   d. you are not a fugitive.

If you wish to waive these statutory rights, you may do so by signing a Form V-A, a copy of which will be provided to you upon request.

By signing this page, you are only acknowledging that you have been offered a copy. You are not waiving any right that you have and are not agreeing to the request for temporary custody.

[signature]
Date

DOC 883595
Institution #

09-07-88
Date

[signature] DR WCC
Witness

Agreement on Detainers. Form I

In duplicate. One copy of this form, signed by the prisoner and the warden should be returned by the warden. One copy signed by the warden should be returned to the prisoner.

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT

AND OF RIGHT TO REQUEST DISPOSITION

Inmate William Fex No. 883595 Inst. Westville Correctional Center

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations or complaints against you concerning which the undersigned has knowledge and the source and contents of each.

Cause 88-270 FY Armed Robbery
Assault With a Deadly Weapon
Felon in Possession of a Firearm

You are hereby further advised that by the provisions of said Agreement, you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, after you shall have caused to be delivered to said prosecuting officer and said court, written notice of the place of your imprisonment and your request, together with a certificate of the custodial authority as above fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations and complaints on the basis of which detainers have been lodged against you from the State to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of this to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify G. Michael Broglin, Superintendent of the institution in which you are confined.

You are also advised that under provisions of said Agreement, the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may, institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery.

DATED: 09-07-88

X William Fex DOC #####

BY: _____

Warden - Superintendent - Director
G. Michael Broglin, Superintendent

RECEIVED:

DATE: _____

Agreement on Detainers: Form II

Two copies, if more than one jurisdiction in the state received has an indictment, information or complaint pending. Additional copies will be necessary for prosecuting officials and clerks of court if detainers have been lodged by other jurisdictions within the state received. One copy should be returned to the prisoner. One copy should be retained by the warden. Signed copies must be sent by the Agreement Administrator of the state which has the prisoner incarcerated (or personnel official of the jurisdiction which lodged the detainer, and the clerk of the court which has jurisdiction over the matter. The copies for the prosecuting officials and the court must be transmitted by certified or registered mail return receipt requested.

INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR

DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: Joseph Filip, Prosec. Atty., Prosecuting Officer Jackson County (jurisdiction)

12th Judicial District, Court Jackson, Michigan (jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

You are hereby notified that the undersigned is now imprisoned in:

Westville Correctional Center (institution) at Westville, Indiana (town and state)

and I hereby request that a final disposition be made of the following indictments, informations or complaints now pending against me:

Cause 88-270 FY Armed Robbery
Assault with a Deadly Weapon
Felon in Possession of a Firearm

Failure to take action in accordance with the Agreement on Detainers, to which your state is committed by law, will result in the dismissal of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition with respect to any charge or proceeding contemplated hereby or included herein and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute a consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which I am now confined.

If jurisdiction over this matter is property in another agency, court or officer, please designate the proper agency, court or officer and return this form to the sender.

The required Certificate of Inmate Status and Offer of Temporary Custody are attached.

DATED: 09-07-88

X William Fex DOC #####
(inmate's name and number)

The inmate must indicate below whether he has counsel or wishes the court in the receiving state to appoint counsel for purposes of any proceedings incidental to this in the receiving state which may take place before his delivery to the jurisdiction in which the indictments, informations or complaints is pending. Failure to list the name and address of counsel will be construed to indicate the inmate's consent to the appointment of counsel by the appropriate court in the receiving state.

A. My counsel is _____ (name of counsel)

whose address is _____ (city, state and zip)

B. I request the appointment of counsel.

X William Fex DOC #####
(inmate's signature)

Agreement on Detainers. Form III

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all co of Form II. In the case of a request initiated by a prosecutor under A . IV, copy of this Form should be sent to the prosecutor upon receipt by the warden of Form V. Copies also should be sent to all other prosecutors in the same state who have lodged detainers against the inmate. A copy may be given to the inmate.

CERTIFICATE OF INMATE STATUS

RE: William Fex (inmate) 883595 (number)

Westville Correctional Center (institution) Westville, Indiana (location)

The [custodial authority] hereby certifies:

1. The term of commitment under which the prisoner above named is being held: two six (6) year concurrent sentenc
2. The time already served: 224 days as of 9/12/88
3. Time remaining to be served on the sentence: 1,743 days as of 9/12/88
4. The amount of good time earned: Presently in credit class I
5. The date of parole eligibility of the prisoner: 1/31/91
6. The decisions of the Board of Parole relating to the prisoner: (If additional space is needed use reverse side) N/A
7. Maximum expiration date under present sentence: 1/30/94
8. Detainers currently on file against this inmate from your state are as follows:

Cause 88-270 FY Armed Robbery

Assault With a Deadly Weapon

Felon in Possession of a Firearm

DATED: 09-07-88

Westville Correctional Center
Custodial Authority

BY: [signature]
Warden-Superintendent-Director
G. Michael Broglin, Superintendent

Agreement on Detainers. Form IV

[illegible] Date September 9, 1988

[illegible] TO DELIVER TEMPORARY CUSTODY

[illegible] Joseph Filip, Prosecuting Attorney (insert name and title if known) Presenting Officer

[illegible] Jackson County, Jackson, Michigan (jurisdiction)

[illegible] to all other prosecuting officers and courts of jurisdictions [illegible]

I.E. William Fex (inmate) Number 883595

Dear Sir:

Pursuant to the provisions of Article V of the Agreement on Detainers between this state and your state, the undersigned hereby [illegible] custody of the above-named prisoner to the appropriate authority in your state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is the basis for the attached detainer(s) or your request(s) (detainers or your requests for custody of _____ (date)).

The required Certificate of Inmate Status is enclosed. (The required Certificate of Inmate Status was sent to you with our letter of _____ (date))

If prosecution under Article IV(d) of the Agreement are indicated, an explanation is attached.

Indictments, informations or complaints charging the following offenses also are pending against the inmate in this state and you are hereby authorized to obtain the inmate for custody of appropriate authorities in these jurisdictions for the purposes of disposing of these indictments, informations or complaints.

Offense	County or Other Jurisdiction
Cause 88-270 FY Armed Robbery	Jackson County, Jackson, Michigan
Assault With a Deadly Weapon	
Felon in Possession of a Firearm	

If you do not intend to bring the inmate to trial, will you please inform us as soon as possible?

Kindly acknowledge.

Westville Correctional Center
(name and title of receiving authority)

BY: [signature]
(Warden-Superintendent-Director) G. Michael Broglin, Supt.
P.O. Box 473, Westville, Indiana 46391
(Institution and address)

The request is _____ (name of inmate)

whose address is _____ (number, city and state)

I request the trial in support thereof.

DEC 28 87

SUPPLEMENT TO FORM I, INDICTMENT OR INFORMATION

In the event that the prosecuting officer of a jurisdiction in which any such indictment, information, or complaint is pending institutes proceedings to obtain a final disposition thereof, you are statutorily entitled to the procedural protection provided in the Indiana Uniform Criminal Extradition Act, IC 35-33-10-3.

Dated: 09-07-88

X [signature] DOC 883595
Name

By: [signature]
Superintendent - Director
G. Michael Broglin, Superintendent

Received: _____

Date: _____

EXPLANATION OF RIGHTS UNDER ARTICLE IV OF AGREEMENT ON DETAINERS

In duplicate. One copy, signed by the offender, shall be retained in the Institutional packet. One copy, signed by the designee of the Institution or Facility head, shall be given to the offender. This is to be filled out when Form V is received at the Institution.

1. You have the right to challenge a request for temporary custody (Form V) in a court of law in this county.
2. You have the right to contest your delivery pursuant to a request for temporary custody (Form V) on the grounds that:
   a. the detainer documents on their face are not in order;
   b. you have not been charged with a crime in the requesting jurisdiction;
   c. you are not the person named in the detainer; or,
   d. you are not a fugitive.

If you wish to waive these statutory rights, you may do so by signing a Form V-A, a copy of which will be provided to you upon request.

By signing this page, you are only acknowledging that you have been offered a copy. You are not waiving any right that you have and are not agreeing to the request for temporary custody.

X [signature]
Name

DOC 883595
Institution #

09-07-88
Date

[signature] DD WCC
Witness

FORM V-A

PRISONER'S AGREEMENT TO TEMPORARY TRANSFER OF CUSTODY

I, William Fex (Prisoner's Full Name), 883595 (Institution #)

am currently incarcerated at Westville Correctional Center (Institution)

P.O. Box 473, Westville, Indiana 46391 (Address)

Without admitting my guilt or innocence, I acknowledge that I am the same person named in the attached request for temporary custody (Form V). I understand that I am entitled to challenge that request for temporary custody in a court of law in this county. I have also been advised that the Governor may intercede in my behalf within thirty (30) days of the request for temporary custody. I wish to waive my right to challenge the request for temporary custody in a court of law, and agree to waive the thirty (30) day period so that I may be transferred as soon as possible.

I also agree that this agreement shall be a waiver of extradition with respect to any charge or proceeding contemplated hereby, and a waiver of extradition to the requesting state to serve any sentence imposed upon me, after completion of my term of imprisonment in this state.

X [signature] DOC [illegible]
Signed

09-07-88
Date

[signature] DPO WCC
Witness

State Form 21103

INDIANA DEPARTMENT OF CORRECTION
WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391 - 0473
Release Office

Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

State Form 2384(R2)

STATE OF INDIANA

DEPARTMENT OF CORRECTION

WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391-0473
(219) 785-2511

September 20, 1988

Joseph Filip, Prosecuting Attorney
Jackson County
312 S. Jackson St.
Jackson, MI 49201

Re: William Fex
DOC 883595

Enclosed please find the Interstate Agreement on Detainers requesting disposition on the stated cause(s) regarding the above captioned subject.

Sincerely,

Roy A. Smith

Roy A. Smith
Correctional Release Coordinator

Encl.

RECEIVED
SEP 26 1988
PROSECUTORS OFFICE

Letters of Authority

EVIDENCE OF AGENT'S AUTHORITY TO ACT FOR RECEIVING STATE

AGREEMENT ON DETAINERS: Form VI

IN QUADRUPLICATE. ALL COPIES, SIGNED BY THE PROSECUTOR AND THE AGENT SHOULD BE SENT TO THE ADMINISTRATOR OF THEIR OWN STATE. AFTER SIGNING ALL COPIES, THE ADMINISTRATOR SHOULD RETAIN ONE FOR HIS FILES, SEND ONE TO THE WARDEN OF THE INSTITUTION IN WHICH THE PRISONER IS LOCATED AND RETURN TWO COPIES TO THE PROSECUTOR WHO WILL GIVE ONE TO THE AGENT FOR USE IN ESTABLISHING HIS AUTHORITY AND PLACE ONE IN HIS FILES.

TO Peter Chatfield
(ADMINISTRATOR OF THE AGREEMENT ON DETAINERS)

William Fex (INMATE) is confined in

Westville Correctional Center (INSTITUTION) P.O. Box 473, Westville, IN 46391-0473 (ADDRESS)

and will be taken into custody at the institution on _____

for return to this jurisdiction for trial on or about March 15, 1989

In accordance with Article V(b), I have designated _____

whose signature appears below as agent to return the prisoner.

_____
SIGNATURE (Prosecuting Official)

_____
SIGNATURE (Agent)

TO: Warden

In accordance with the above representation and the provisions of the Agreement on Detainers,

_____ (AGENT) is hereby designated as agent for this state to return

_____ (INMATE) for trial.

_____
ADMINISTRATOR

MICHIGAN DEPARTMENT OF CORRECTIONS

EVIDENCE OF AGENT'S AUTHORITY TO ACT FOR RECEIVING STATE

CSO 221F Rev. 9/80

AGREEMENT ON DETAINERS: Form VI

IN QUADRUPLICATE. ALL COPIES, SIGNED BY THE PROSECUTOR AND THE AGENT SHOULD BE SENT TO THE ADMINISTRATOR OF THEIR OWN STATE. AFTER SIGNING ALL COPIES, THE ADMINISTRATOR SHOULD RETAIN ONE FOR HIS FILES, SEND ONE TO THE WARDEN OF THE INSTITUTION IN WHICH THE PRISONER IS LOCATED AND RETURN TWO COPIES TO THE PROSECUTOR WHO WILL GIVE ONE TO THE AGENT FOR USE IN ESTABLISHING HIS AUTHORITY AND PLACE ONE IN HIS FILES.

TO G. Peter Chatfield, Deputy
(ADMINISTRATOR OF THE AGREEMENT ON DETAINERS)

William Fex (INMATE) is confined in

Westville Correctional Center (INSTITUTION) P.O. Box 473, Westville, IN 46391-0473 (ADDRESS)

and will be taken into custody at the institution on 10-25-88

for return to this jurisdiction for trial on or about March 15, 1989

In accordance with Article V(b), I have designated Jason D. Hall

whose signature appears below as agent to return the prisoner.

Jerold Schneeberger
SIGNATURE: (Prosecuting Official)

Jason D. Hall
SIGNATURE: (Agent)

TO: Warden

In accordance with the above representation and the provisions of the Agreement on Detainers,

Jason D. Hall (AGENT) is hereby designated as agent for this state to return

William Fex (INMATE) for trial.

G. Peter Chatfield
Deputy ADMINISTRATOR
G. Peter Chatfield

MICHIGAN DEPARTMENT OF CORRECTIONS

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PRISONER'S REQUEST OR DISPOSITION OF A DETAINER

CSO 221G Rev. 9/80

AGREEMENT ON DETAINERS: Form VII

IMPORTANT: THIS FORM SHOULD ONLY BE USED WHEN AN OFFER OF TEMPORARY CUSTODY HAS BEEN RECEIVED AS THE RESULT OF A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER. IF THE OFFER HAS BEEN RECEIVED BECAUSE ANOTHER PROSECUTOR IN YOUR STATE HAS INITIATED THE REQUEST, USE FORM VIII. COPIES OF FORM VII SHOULD BE SENT TO THE WARDEN, THE PRISONER, THE OTHER JURISDICTIONS IN YOUR STATE LISTED IN THE OFFER OF TEMPORARY CUSTODY, AND THE AGREEMENT ADMINISTRATOR OF THE STATE WHICH HAS THE PRISONER INCARCERATED. COPIES SHOULD BE RETAINED BY THE PERSON FILING THE ACCEPTANCE AND THE JUDGE WHO SIGNS IT.

TO: G. Michael Brooks (WARDEN, SUPERINTENDENT, DIRECTOR) Westville Correctional Center (INSTITUTION)

P.O. Box 473, Westville, IN 46391-0473 (ADDRESS)

In response to your letter of 9/22/88 (DATE) and offer of temporary custody regarding William Fex (NAME OF PRISONER)

who is presently under indictment, information, complaint in the County of Jackson (JURISDICTION) of which I am

Prosecuting Attorney (TITLE OF PROSECUTING OFFICER), please be advised that I accept temporary custody and that I propose to bring this person to trial on the indictment, information or complaint named in the offer within the time specified in Article III(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction, I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

COMMENTS: (If your jurisdiction is the only one named in the offer to temporary custody, use the space below to indicate when you would like to send your agents to conduct the prisoner to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the space below to make inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard.)

SIGNATURE
TITLE
Prosecuting Attorney

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

DATED: 10/26/88

SIGNATURE (Judge)
COURT

INDIANA DEPARTMENT OF CORRECTION
WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391 - 0473
RElease Office

CERTIFIED
P 956 212 004
MAIL

WESTVILLE IND SEP 22 '88
U.S. POSTAGE
2.20

Kim Best
Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

Return Receipt Requested

State Form 2384R2

INDIANA DEPARTMENT OF CORRECTION
WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391 - 0473
RElease Office

CERTIFIED
P 956 212 004
MAIL

WESTVILLE IND. SEP 27 '86

U.S. POSTAGE
2.20

Kim Best
Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

Return Receipt Requested

Certified Mail Receipt

State Form 2384R3

Notice of Receipt of Forms

STATE OF INDIANA

DEPARTMENT OF CORRECTION

WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391-0473
(219) 785-2511

September 20, 1988

Kim Best
Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

Re: William Fex
883595

Enclosed please find the Interstate Agreement on Detainers requesting disposition on the stated cause(s) regarding the above captioned subject.

Sincerely,

Roy A. Smith

Roy A. Smith
Correctional Release Coordinator

Encl.

9-30-88

The Defendant has not been arraigned on this charge as of 9-30-88, in the 12th. District Court. If you have any questions, please call. 517-788-4260.

Rosalie Steffes
Deputy Clerk

AN EQUAL OPPORTUNITY EMPLOYER

Agreement on Detainers Form II

[illegible]

INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: Joseph Filip, Prosec. Atty., Prosecuting Officer Jackson County (jurisdiction)

12th Judicial District, Court Jackson, Michigan (jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

You are hereby notified that the undersigned is now imprisoned in:

Westville Correctional Center (institution) at Westville, Indiana (town and state)

and I hereby request that a final disposition be made of the following indictments, informations or complaints now pending against me:

Cause 88-270 FY Armed Robbery
Assault with a Deadly Weapon
Felon in Possession of a Firearm

Failure to take action in accordance with the Agreement on Detainers, to which your state is committed by law, will result in the dismissal of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition with respect to any charge or proceeding contemplated hereby or included herein, and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall operate as a request by me to the prosecution of any body or any court where my presence may be required in order to effectuate the purposes of the Agreement on Detainers and a waiver of any such extradition custody to be returned to the institution in which I am now confined.

If jurisdiction over this matter is properly in another agency, court or officer, please designate the proper agency, court or officer and return this form to the sender.

The required Certificate of Inmate Status and Offer of Temporary Custody are submitted.

DATED: 09-07-88 [signature] DOC 883595
(inmate's name and number)

The inmate must indicate below whether he has counsel or wishes the court in the receiving state to appoint counsel for purposes of any proceedings necessary to find in the receiving state which may take place before his delivery to the jurisdiction in which the indictments, informations or complaints are pending. Failure to use the blank and address of counsel will be construed to indicate the inmate's consent to the appointment of counsel by the appropriate court in the receiving state.

A. My counsel is _____ (name of counsel)
whose address is _____ (city, street and state)

B. I request the court to appoint counsel. [signature] DOC 883595
(inmate's signature)

Agreement on Detainers. Form I

In duplicate. One copy of this form, signed by the prisoner and the warden where he is held, is to be sent by the warden directly to the prosecuting official and court of the jurisdiction which has lodged the detainer against the prisoner.

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT

AND OF RIGHT TO REQUEST DISPOSITION

Inmate William Fex No. 883595 Inst. Westville Correctional Center

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations or complaints against me concerning which the undersigned has knowledge and the source and contents of each.

Cause 88-270 FY Armed Robbery
Assault With a Deadly Weapon
Felon in Possession of a Firearm

You are hereby further advised that by the provisions of said Agreement, you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days after you shall have caused to be delivered to said prosecuting officer and said court, written notice of the place of your imprisonment and this request, together with a certificate of the custodial authority as above fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations and complaints on the basis of which detainers have been lodged against you from the State to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of this to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to send G. Michael Broglin, Superintendent of the institution in which you are confined.

You are also advised that under provisions of said Agreement, the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may, if he has good cause in his opinion, institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery.

DATED: 09-07-88

BY: _____
Warden - Superintendent - Director
G. Michael Broglin, Superintendent

RECEIVED:

DATE: _____

MICHIGAN DEPARTMENT OF CORRECTIONS

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER

CSO 221GRev. 9/80

AGREEMENT ON DETAINERS: Form VII

IMPORTANT: THIS FORM SHOULD ONLY BE USED WHEN AN OFFER OF TEMPORARY CUSTODY HAS BEEN RECEIVED AS THE RESULT OF A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER. IF THE OFFER HAS BEEN RECEIVED BECAUSE ANOTHER PROSECUTOR IN YOUR STATE HAS INITIATED THE REQUEST, USE FORM VIII. COPIES OF FORM VII SHOULD BE SENT TO THE WARDEN, THE PRISONER, THE OTHER JURISDICTIONS IN YOUR STATE LISTED IN THE OFFER OF TEMPORARY CUSTODY, AND THE AGREEMENT ADMINISTRATOR OF THE STATE WHICH HAS THE PRISONER INCARCERATED. COPIES SHOULD BE RETAINED BY THE PERSON FILING THE ACCEPTANCE AND THE JUDGE WHO SIGNS IT.

TO: G. Michael Broglin (WARDEN, SUPERINTENDENT, DIRECTOR) Westville Correctional Center (INSTITUTION)

P.O. Box 473, Westville, IN 46391-0473 (ADDRESS)

FILED
'88 OCT 20 P2:18

In response to your letter of 9/20/88 (DATE) and offer of temporary custody regarding William Fex (NAME OF PRISONER)

who is presently under indictment, information, complaint in the County of Jackson (JURISDICTION) of which I am

Prosecuting Attorney (TITLE OF PROSECUTING OFFICER), please be advised that I accept temporary custody and that I propose to bring this person to trial on the indictment, information or complaint named in the offer within the time specified in Article III(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction, I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

COMMENTS: (If your jurisdiction is the only one named in the offer to temporary custody, use the space below to indicate when you would like to send your agents to conduct the prisoner to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the space below to make inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard.)

SIGNATURE: [signature]

TITLE: Prosecuting Attorney

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

DATED: 10/20/88

SIGNATURE (Judge): [signature]

COURT: [illegible] District Court

Judgment

Approved, SCAO

Original - Court
1st copy - Corrections

2nd copy - Correct a (for return)
3rd copy - Arresting agency

STATE OF MICHIGAN JUDICIAL DISTRICT 4th JUDICIAL CIRCUIT	JUDGMENT OF SENTENCE COMMITMENT TO CORRECTIONS DEPARTMENT	CASE NO. 88 49555 FC

ORI MI 380015J — Court address Jackson County Circuit Court, 312 S. Jackson St., Jackson, MI 49201 — Court telephone no 517/788-4360

THE PEOPLE OF THE STATE OF MICHIGAN v

Defendant name, address, and telephone no: WILLIAM FEX

CTN	SID	DOB
38 88001421-01	1458433-A	11-7-66

Prosecuting attorney name	Bar no
JOSEPH S. FILIP	22920

Defendant attorney name	Bar no
WENDELL E. JACOBS, JR.	15406

1. THE COURT FINDS that defendant, represented by counsel, was found guilty on 3-23-89 (Date) of the crime(s) as stated below:

Count	CONVICTED BY Plea*	Court	Jury	CRIME	CHARGE CODE Specify section and sub section
1			G	ARMED ROBBERY	750.529
3			G	FELONY FIREARM	750.227B-A

*Plea, insert G for guilty plea use NC for nolo contendere use MI for guilty but mentally ill

IT IS ORDERED:

2. Defendant is sentenced to the custody of the Michigan Department of Corrections as stated below. This sentence shall be immediately executed.

Count	SENTENCE DATE	MINIMUM Years	Mos	Days	MAXIMUM Years	Mos	DATE SENTENCE BEGINS	JAIL CREDIT Mos	Days	OTHER INFORMATION
1	4-20-89	5			20		At the termination of the sentence imposed this date on the felony firearm charge.			
3	4-20-89	2			2		4-20-89			

OFFENSE DATE 12-8-87

☐ Defendant shall pay restitution of $_____

FILED
IN MY OFFICE
APR 21 PM 2 15
[illegible] KAHN
CLERK OF COUNTY

3. Court recommendation:

April 20, 1989
Date

Circuit Court Judge GORDON W. BRITTEN (P11216) Bar no

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy Court Clerk

CC 219b (3/87) JUDGMENT OF SENTENCE, COMMITMENT TO CORRECTIONS DEPARTMENT MCR 6.103

Petition for Appellate Counsel

AFFIDAVIT AND PETITION FOR APPELLATE ATTORNEY

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

The People of the State of Michigan

vs.

WILLIAM FEX
Defendant

No. 88 49555 FC

STATE OF MICHIGAN
COUNTY OF JACKSON } SS.

William Fex, being duly sworn, deposes and says that he (she) is the defendant in the above entitled cause; that he (she) was sentenced in said court on the 20th day of April, 19 89, for the crime of Armed Robbery

that not more than Fifty Six (56) days have elapsed since such sentence; that he (she) is financially unable to secure the assistance of an attorney for appellate review of said cause, and he (she) petitions said court to appoint an attorney and to furnish the attorney with such portions of the transcript and record that the attorney requires to prepare post conviction motions and to perfect an appeal.

Defendant

Subscribed and sworn to before me

This 2 day of Jan, 1990.

Robert J. Burdette
NOTARY PUBLIC STATE OF INDIANA
LA PORTE COUNTY
MY COMMISSION EXP. MAR 8 1993

RECEIVED

THIS FORM MUST BE RETURNED TO THE COURT WITHIN FIFTY SIX (56) DAYS FROM THE DATE OF SENTENCE.

STATE OF MICHIGAN
4TH JUDICIAL CIRCUIT
Order Appointing Counsel
JACKSON COUNTY 312 S. Jackson St.
Jackson, MI 201 (517) 788-4382

ORDER FOR APPOINTMENT OF APPELLATE COUNSEL AND TRANSCRIPT

CASE NO: 88 - 49555 FC

PEOPLE OF THE STATE OF MICHIGAN
VS.
WILLIAM FEX
#883595
CTN: 38 88 001421 01
SID: 1458433-A DOB:11-7-66

ORIGINAL CHARGE(S) (MCL cite):
750.529; 750.82; 750.227b
CONVICTED OF (MCL cite):
750.529; 750.227B-A
SENTENCE(S):
5 - 20 Yrs.

DATE: June 9, 1989 JUDGE: GORDON W. BRITTEN

1. On June 8, 1989 defendant filed a petition for appointment of counsel and indigency affidavit.

IT IS ORDERED:

2. Defendant's request for appellate counsel is denied because: _____ petition is untimely OR _____ defendant is not indigent.

3. JOHN B. PAYNE JR., 22312 Garrison, Dearborn, MI 48124
(313) 562-5440

is appointed counsel for defendant in post-conviction proceedings. If appointed counsel cannot, or will not, accept his appointment, counsel shall notify the court immediately. That counsel shall, prior to obtaining authorization for payment from the Court, return all portions of the transcripts provided at County expense, to the County Clerk, Court Services Division for retention in the court file.

4. Court reporter(s) shall file with the trial court clerk and furnish to counsel the portion of the transcript checked below, and any other transcripts requested by counsel in this case. Reporter(s) shall be paid as provided by law.

Transcript Ordered:	Reporter:	Designat.& No:	Date of Proceeding:
1. xxxxx Jury Trial	D. Gehl	(Decator)	
2. _____ Bench Trial			
3. _____ Plea			
4. _____ Prob. Viol.			
___ Plea/ ___ Trial			
5. _____ Sentence			
6. _____ Other (Specify)			

5. If defendant pled guilty, guilty but mentally ill, or nolo contender transcripts must be furnished within 28 days of the date of this order (MCR 6.101(B)).

6. A copy of the register of actions shall be sent to counsel. The clerk shall forward copies of all transcripts and documents as counsel requests. (MCR 6.101(L)).

6-12-89
Date

Gordon W. Britten, Circuit Judge

CERTIFICATE OF MAILING:
I certify that on this date I mailed a copy of this order to counsel, defendant, prosecutor, and the Michigan Appellate Assigned Counsel System.

6/12/89
Date

Signature

Rev. 12/87

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, June 21, 1991

Plaintiff-Appellee,

v No. 119192

WILLIAM FEX,

Defendant-Appellant.

Before: Neff, P.J., and Murphy and Marilyn Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, and felony-firearm, MCL 750.227b; MSA 28.424(2). Defendant appeals and claims that charges must be dismissed due to a violation of the statute relating to the Interstate Agreement on Detainers (IAD), MCL 780.601; MSA 4.147(1). Defendant argues that the court lacked jurisdiction to try him since trial did not commence within the 180 days as required by this statute. We agree and reverse defendant's convictions.

The record reveals that on September 7, 1988, defendant was notified of a detainer and his rights pursuant to the IAD and on the same date he made his request for disposition to the Indiana prison authorities, where he was being held. Apparently, the Indiana prison authorities did not immediately forward the disposition request to the Jackson County Prosecutor's Office, as it was not received by that office until September 26, 1988. Trial commenced on March 22, 1989, more than 180 days after defendant served his dispositional request on the Indiana authorities.

Michigan case law is clear that the commencement of the 180-day statutory period was triggered by the defendant's request for final disposition to the prison officials in this case. People v Malone, 177 Mich App 393, 399; 442 NW2d 658 (1989); People v Marshall, 170 Mich App 269, 276-277; 428 NW2d 39 (1988). Since the charges against defendant were not brought to trial within the requisite 180 days, and noting that no exceptions to the statutory requirement are claimed, dismissal of the charges against defendant is mandated. People v Joseph Bowman, __ Mich App __; __ NW2d __ (Docket No. 69453, decided May 7, 1991, 9:35 a.m.).

For the forgoing reasons, defendant's convictions and sentences are vacated and the charges dismissed.

Reversed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Marilyn Kelly

Michigan Supreme Court
Lansing, Michigan 48909

Syllabus

Michigan Supreme Court Decision

Chief Justice
Michael F. Cavanagh

Associate Justices
Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.

This syllabus was prepared by the Reporter of Decisions.

Reporter of Decisions
William F. Haggerty

PEOPLE v FEX

Docket No. 91979. Decided January 9, 1992. On application by the people for leave to appeal, the Supreme Court, in lieu of granting leave, reversed the judgment of the Court of Appeals and reinstated the judgment of the circuit court.

William Fex was charged in the Jackson Circuit Court with armed robbery and possession of a firearm during the commission of a felony. Before trial, the court, Gordon W. Britten, J., denied the defendant's motion for dismissal, finding the trial to be within the 180-day limitation period of the Interstate Agreement on Detainers. Thereafter, the defendant was convicted by a jury. The Court of Appeals, Neff, P.J., and Murphy and Marilyn J. Kelly, JJ., reversed in an unpublished opinion per curiam (Docket No. 119192). The people seek leave to appeal.

In an opinion per curiam, signed by Justices Brickley, Boyle, Riley, Griffin, and Mallett, the Supreme Court held:

The Court of Appeals erred in calculating the 180-day period.

The period begins to run when a prisoner's request for final disposition of an indictment, information, or complaint is received by officials of the state in which the prosecution is pending. Under the agreement, a prisoner has caused delivery when there is actual receipt.

Reversed.

Justice Levin, joined by Chief Justice Cavanagh, dissenting, stated that peremptory reversal should be reserved for cases in which the law is settled and no factual assessment is required. In this case, because a legal assessment is required, peremptory disposition is not appropriate.

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Michigan Supreme Court
Lansing, Michigan 48909

Opinion

Chief Justice
Michael F. Cavanagh

Associate Justices
Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.

FILED JANUARY 9, 1992

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

No. 91979

WILLIAM FEX,

Defendant-Appellee.

PER CURIAM

The Court of Appeals reversed this defendant's convictions on the ground that his trial did not take place within the 180-day time limit that is found in the Interstate Agreement on Detainers. We conclude that the Court of Appeals erred in its calculation of the 180-day period. We therefore reverse the judgment of the Court of Appeals and reinstate the judgment of the circuit court.

I

In December 1987, a robbery took place at a Jackson restaurant. Following an investigation, the defendant was

charged with armed robbery and possession of a firearm during the commission of that felony.[1] MCL 750.529, 750.227b: MSA 28.797, 28.424(2).

For an unrelated conviction, the defendant was incarcerated during 1988 at the Westville Correctional Center in Indiana. On September 7, 1988, he learned that Michigan authorities had placed a detainer on him as a result of the Jackson robbery. That day, he gave the Indiana prison authorities his request for final disposition of the robbery charge.

The Indiana authorities mailed the defendant's request on September 22, 1988. It was received by the Jackson County Prosecuting Attorney on September 26, 1988.

The defendant's trial began on March 22, 1989, when a jury was selected. March 22 was 177 days after the request was received in Jackson County, 181 days after it was mailed from Indiana, and 196 days after the defendant delivered his request to the Indiana authorities.

Prior to trial, the defendant had filed a written motion for dismissal under the Interstate Agreement on Detainers (IAD). MCL 780.601 et seq.; MSA 4.147(1) et seq. In his motion, he argued that the trial would not begin until after the 180-day limitation found in Article III(a) of the IAD.

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[1]The defendant was also charged with assault with intent to murder, but that count was later dismissed. MCL 750.82; MSA 28.277.

The trial court heard and denied the motion on the first day of trial. The next day, the jury found the defendant guilty of armed robbery and felony-firearm.[2]

The defendant's convictions were reversed by the Court of Appeals.[3] The prosecutor has applied for leave to appeal.

II

Article III(a) of the IAD provides that a defendant "shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint . . . ." This case squarely presents the question whether the phrase "caused to be delivered" refers to the date when the request is given to prison authorities, or the date when the request is received by officials of the state where the prosecution is pending.

The IAD is several decades old and is written in a style that permits the interpretation urged by the defendant.[4]

---

[2]The defendant was sentenced to a term of from five to twenty years in prison for armed robbery. He also received the mandatory two-year consecutive term for felony-firearm.

[3]Unpublished opinion per curiam of the Court of Appeals, decided June 21, 1991 (Docket No. 119192).

[4]Article III(a) does not explicitly state that the notice must be received in order to trigger the 180-day period. Nor does it say that the prisoner must deliver his request. Instead, the statute requires the prisoner to have "caused"

However we are persuaded that the proper interpretation is that urged by the prosecutor. In Article III (b), the IAD states a prisoner's duty to give or send the request to the prison authorities who are holding him. Similar language, which would indicate that the 180-day period runs from the date the request is given or sent to prison authorities, could easily have been employed in Article III(a), if the drafters had been so inclined. Instead, the period runs from the time when the prisoner has caused delivery, which is actual receipt.

This interpretation is consistent with the explanation offered by the United States Supreme Court in Carchman v Nash, 473 US 716, 721; 105 S Ct 3401; 87 L Ed 2d 516 (1985):

> "Specifically, Art. III requires the warden to inform the prisoner that a detainer has been lodged against him and that he may request final disposition of the indictment, information, or complaint upon which the detainer is based. If the prisoner makes such a request, the warden must forward it, together with the certificate providing certain information about the prisoner's terms of confinement, to the appropriate prosecuting official and court of the receiving State. The authorities in the receiving State then must bring the prisoner to trial within 180 days, absent good cause shown, or the court must dismiss the indictment, information, or complaint with prejudice, and the detainer will cease to be of any force or effect." (Emphasis supplied.)

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the delivery. Since Article III(b) specifically states that the prisoner is to give the request to the prison authorities (the prisoner is not personally to send the request to the state that seeks to prosecute), one could say that a prisoner who has fulfilled the obligation under Article III(b) has "caused" the delivery to the extent that it is within the prisoner's power to do so.

A similar view is found in the report that the United States Senate Judiciary Committee presented when it recommended passage of the IAD:

> "Under the agreement, prison authorities are required to inform prisoners of all indictments, informations, or complaints on the basis of which detainers have been lodged against them by other jurisdictions. Prisoners may then request trial on such pending charges. Any request is transmitted through the warden to the proper official in the other jurisdiction who then has 180 days to bring the prisoner to trial." Senate Report No. 91-1356, 91st Congress, 2d Session, 3 US Code Cong & Admin News, 4864, 4865 (1970). (Emphasis supplied).

The rule requiring actual receipt of the prisoner's request has been adopted in the overwhelming majority of jurisdictions that have considered this question.[5] A typical discussion is found in State v Moore, 774 SW2d 590, 595 (Tenn, 1989), where the Tennessee Supreme Court explained:

> "In our opinion the receiving state cannot be charged with attempting to try the prisoner within 180 days until the receiving state has been given notice, by the prisoner or by officials of the sending state, of a request to proceed under Article III. Once that burden has been satisfied by the prisoner, the receiving state must, of course, comply with the terms of the Compact. There is a division of authority on this point. A few states have calculated the time from the date of the signing of the request for disposition, Form II, regardless of whether the receiving state receives the request or not. See, e.g., McCallum v State, 407 So 2d 865 (Ala Crim App, 1981), People v Daily, 46 Ill App 3d 195; 4 Ill Dec 756; 360 NE2d 1131 (1977), Commonwealth v Martens, 398 Mass 674; 500 NE2d 282 (1986), cert den 481 US 1041; 107 S Ct

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[5]An obvious purpose of an interstate agreement is to achieve a uniform body of law in the jurisdictions that have enacted the agreement. Absent sound reasons to the contrary, it is therefore sensible to interpret such an agreement in the same manner as a majority of other jurisdictions.

1982; 95 L Ed 2d 821 (1987), State v Well[illegible] 186 NJ Su[illegible] 497; 453 A2d 236 (1982), and [illegible]ple v [I[illegible]egrino], 131 Misc 2d 118; 499 NYS2d 841 (1986).

"By far a greater number of cases, however, have reached the opposite conclusion, holding that the prosecutor or court in the receiving state cannot reasonably be expected to proceed until receipt of notice of the prisoner's request. See, e.g., Young v Mabry, 471 F Supp 553 (ED Ark, 1978), aff'd 596 F2d 339 (CA 8 [1979]), cert den 444 US 853; 100 S Ct 107; 62 L Ed 2d 69 (1979); Beebe v Vaughn, 430 F Supp 1220 (D Del, 1977); Spears v State, 280 Ark 577; 660 SW2d 913 (1983); People v Bielecki, 41 Colo App 256; 588 P2d 377 (1978); State v Braswell, 194 Conn 297; 481 A2d 413 (1984), cert den sub nom Braswell v Connecticut, 469 US 1112; 105 S Ct 793; 83 L Ed 2d 786 (1985); State v Minnick, 413 So 2d 168 (Fla App, 1982); Pinnock v State, 384 So 2d 738 (Fla App, 1980); Thompson v State, 186 Ga App 379; 367 SE2d 247 (1988); Scrivener v State, 441 NE2d 954 (Ind, 1982); Holland v State, 265 Ind 216; 352 NE2d 752 (1976); Sweat v Darr, 235 Kan 570; 684 P2d 347 (1984); State v White, 234 Kan 340; 673 P2d 1106 (1983); Hines v State, 58 Md App 637; 473 A2d 1335 (1984); State v Walton, 734 SW2d 502 (Mo [en banc], 1987); State v McGann, 126 NH 316; 493 A2d 452 (1985); State v Ternaku, 156 NJ Super 30; 383 A2d 437 (1978); State v Reitz, 26 Ohio App 3d 1; 498 NE2d 163 (1984); Commonwealth v Fisher, 451 Pa 102; 301 A2d 605 (1973); State v Moosey, 504 A2d 1001 (RI, 1986). See generally anno: 98 ALR[3d] 160, § [16][a] . . . .

"In these cases it has been noted that it would be contrary to the public interest to start the 180 day period before actual receipt by the prosecutor of the prisoner's request and that this could not have been the legislative intent in enacting the Compact. Article III requires that the receiving state proceed after the prisoner 'shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of his imprisonment and his request for final disposition' of the charges pending there. (Emphasis added)."

In the present case, the Court of Appeals cited three prior decisions for the rule that the 180-day statutory period

is triggered when a defendant provides a req t for final disposition to prison authorities. People v Marshall, 170 Mich App 269, 277; 428 NW2d 39 (1988); People v Malone, 177 Mich App 393, 398-399; 442 NW2d 658 (1989); People v Bowman, 189 Mich App 215, 218-219; 472 NW2d 645 (1991). However, an examination of these authorities demonstrates that they are of limited applicability.

In Marshall, a prisoner's initial request for final disposition was never delivered by prison authorities. Similarly, Bowman involved a complete failure to forward a prisoner's request.[6] The statement in Malone was dictum.[7]

In light of all these considerations, we are persuaded that the majority rule should be adopted in Michigan. We thus conclude that the Court of Appeals erred when it found that the defendant was not tried within the 180-day period stated in Article III(a) of the IAD.[8] We therefore reverse the judgment of the Court of Appeals and reinstate the judgment

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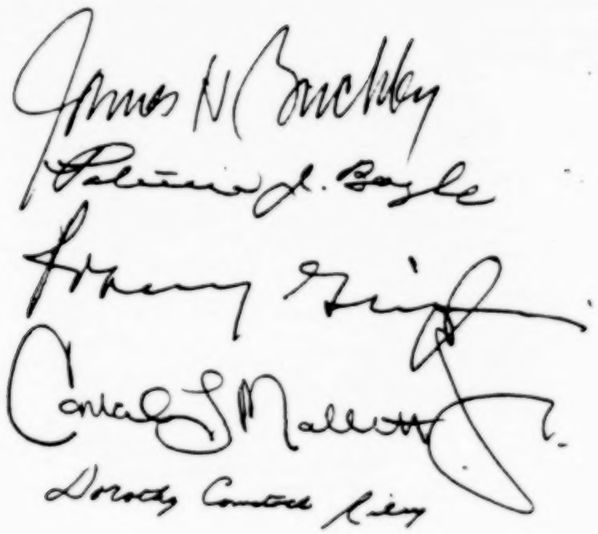
[6]Since Article III(b) states that prison authorities "shall promptly forward" a prisoner's request, we reserve the question how the IAD should be applied in a case where the request is never forwarded or where there is a very substantial delay in delivering the defendant's request.

[7]Under the analysis applied by the Court of Appeals in Malone, the defendant was timely tried without regard to whether the 180-day period was triggered by the defendant giving notice to prison authorities or by actual receipt in the state where the prosecution was pending.

[8]We have considered the defendant's other arguments, and are not persuaded that relief should be granted on those claims.

of the circuit court.[9] MCR 7.302(F)(1).



[9] The defendant's motion for bond pending appeal is therefore denied as moot.

STATE OF MICHIGAN

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

No. 91979

WILLIAM FEX,

Defendant-Appellee.

BEFORE THE ENTIRE BENCH

LEVIN, J. (dissenting).

I adhere to the view that peremptory reversal should be reserved for cases in which the law is settled and no factual assessment is required.[1] In the instant case, as indicated in

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[1] Roek v Chippewa Valley Bd of Ed, 430 Mich 314, 322; 422 NW2d 680 (1988) (Levin, J., separate opinion); Grames v Amerisure Ins Co, 434 Mich 867, 868-875 (1990) (Levin, J., dissenting); People v Little, 434 Mich 752, 769-770; 456 NW2d 237 (Levin, J., dissenting); People v Wrenn, 434 Mich 885, 885-886 (1990) (Levin, J., dissenting); Harkins v Northwest Activity Ctr, Inc, 434 Mich 896, 899 (1990) (Levin, J., dissenting); Dep't of Social Services v American Commercial Liability Ins Co, 435 Mich 508, 515; 460 NW2d 194 (1990) (Levin, J., separate opinion); Yahr v Garcia, 436 Mich 872 (1990) (Levin, J., dissenting); Universal Underwriters Ins Co v Vallejo, 436 Mich 872, 873-874 (1990) (Levin, J., dissenting); People v Stephens, 437 Mich 901, 901-908 (1991) (Levin, J., dissenting); People v Berkey, 437 Mich 40, 54; 467 NW2d 6 (1991) (Levin, J., dissenting); Turner v Washtenaw Co Road Comm, 437 Mich 35, 38-39; 467 NW2d 4 (1991) (Levin, J., separate opinion); Lepior v Venice Twp, 437 Mich 951, 952-962 (1991) (Levin, J., dissenting).

the ma jority opinion, a legal assessment is required. Peremptory disposition is not appropriate.

The meaning of the phrase, "within one hundred and eighty days after [the prisoner] shall have caused to be delivered" to the prosecutor and the court, written notice and request for formal disposition (Interstate Agreement on Detainers, MCL 780.601; MSA 4.147[1]), is not so free from doubt that peremptory disposition is appropriate.

The paraphrase of the quoted words by the United States Supreme Court, set forth in the majority opinion, who then has 180 days to bring the prisoner to trial,[2] does not indicate whether the 180 days begin to run when notice is given or sent by the prisoner, or, rather, when notice is received by the prosecutor and court. The integrity of, and judicial reliance on, congressional committee reports, has been questioned.[3]

See Schweiker v Hansen, 450 US 785, 791; 101 S Ct 1468; 67 L Ed 2d 685 (1981) (Marshall, J., dissenting) ("A summary reversal is a rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error"); Leis v Flynt, 439 US 438, 457-458; 99 S Ct 698; 58 L Ed 2d 717 (1979) (Stevens, J., dissenting) ("Summary reversal 'should be reserved for palpably clear cases of . . . error.' Eaton v Tulsa, 415 US 697, 707 [94 S Ct 1228; 39 L Ed 2d 693 (1974)] [Rehnquist, J., dissenting]").

[2]Slip op, p 4.

[3]"[W]e are a Government of laws not of committee reports." Wisconsin Public Intervenor v Mortier, 501 US ____; 111 S Ct 2476; 115 L Ed 2d 532, 553 (1991) (Scalia, J., concurring).

The weight of authority is surely worthy of consideration, but has not been thought to be controlling, or a sufficient reason, in itself, for decision.

Charles L. Levin

Michael F. Cavanagh

(3)

Docket No. 91-7873

IN THE UNITED STATES SUPREME COURT

October Term, 1991

WILLIAM FEX,

Petitioner,

v

STATE OF MICHIGAN,

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

JERROLD SCHROTENBOER (P33223)
Chief Appellate Attorney
Jackson County Prosecutor's Office
312 South Jackson Street
Jackson, MI 49201-2220
(517) 788-4286

BEST AVAILABLE COPY

31pp

QUESTION PRESENTED FOR REVIEW

WHETHER THE INTERSTATE AGREEMENT ON DETAINERS' 180 DAY PERIOD BEGINS TO RUN WHEN THE PROSECUTOR RECEIVES THE INMATE'S REQUEST OR EARLIER.

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CITATION OF THE OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW

People v. Fex, 439 Mich. 117, 479 N.W.2d 625 (1992)

People v. Fex, Michigan Court of Appeals docket number 119192, released 06/21/91.

People v. Fex, Jackson County Circuit Court Number 88-49555-FC, released 03/23/89.

JURISDICTIONAL STATEMENT

Respondent concedes that this Court has jurisdiction over the issues presented in this case. Cuyler v. Adams, 449 U.S. 433, 442 (1981).

STATEMENT OF THE CASE

As petitioner's Statement is too argumentative, respondent cannot adopt it but will supply the following statement of facts.

On March 23, 1989, petitioner was convicted by a jury of armed robbery, Mich. Comp. Laws sec. 750.52, and felony firearm, Mich. Comp. Laws sec. 750.227b. Subsequently, on April 20, 1989, Jackson County Circuit Court Judge Gordon Britten sentenced him to consecutive terms of 2 and 5 to 20 years imprisonment (concurrent to the sentence that he was serving in Indiana). On June 21, 1991, however, the Michigan Court of Appeals reversed the conviction and ordered the charges dismissed. Then, on January 9, 1992, the Michigan Supreme Court summarily reversed the Michigan Court of Appeals' decision and reinstated the conviction. 439 Mich. 117, 479 N.W.2d 625 (1992).

On December 8, 1987, between 1:00 and 1:30 a.m., petitioner robbed a Rax

restaurant in Jackson with a shotgun. (Trial Transcript [Tr], pp. 48-49, 53-54). He took between $350.00 and $450.00. (Tr, p. 60).

Petitioner eventually was convicted on unrelated charges in Indiana and sentenced to serve the time in the Westville Correctional Facility in Michigan City, Indiana. Respondent placed a detainer with that facility against him for the charge in the present case. Soon afterwards, petitioner requested, on September 7, 1988, pursuant to the Interstate Agreement on Detainers, Article III, that the untried charge (in the present case) be disposed of. Respondent received the paperwork from the Indiana warden on September 26, 1988.

About ten days before trial started, petitioner filed a motion to dismiss claiming that the Interstate Agreement on Detainers had been violated. He argued that both Articles III and IV applied. He claimed that he should have been tried within 180 days of September 22, 1988, the

day that his request for final disposition was mailed by the prison to respondent. He also argued that he should have been tried within 120 days of October 26, 1988, the date that he was physically returned to Michigan. The parties argued the motion on March 22, 1989, the first day of trial. In denying the motion to dismiss, Judge Britten first ruled that the 120 day rule was not violated because Article IV does not apply because respondent had not initiated the extradition. (Tr, pp. 11-12). He then stated:

> The Court is quite satisfied that the time is triggered by receipt of the notice by the prosecutor otherwise you'd have no way of knowing that the matter was in process and he could be denying the People of their rights to prosecution without ever being aware that the matter was received, so it makes sense to us that date to start our time

> running here leaves 182 [sic] days court file reflects to today. We have a delay of seven days because the transcript would not be ready for the arraignment in Circuit Court and that seven-day delay was not the fault of the prosecutor nor the defendant but because the reporter was not able to get the transcript out in one week so that was a seven-day delay there which would take away from 182 [sic] and leave us with 175 [sic] days.
>
> * * *
>
> I see my first mistake. I started off with nine days in September and that would not be correct. It's an error. We're under 177 days to today. Thank you. (Tr, pp. 12-13).

The Michigan Court of Appeals, however, on June 21, 1991, disagreed:

> Michigan case law is clear and the commencement of the 180-day

statutory period was triggered by the defendant's request for final disposition to the prison officials in this case. People v Malone, 177 Mich App 393, 399; 442 NW2d 658 (1989); People v Marshall, 170 Mich App 269, 276-277; 428 NW2d 39 (1988). Since the charges against defendant were not brought to trial within the requisite 180-days, and noting that no exceptions to the statutory requirement are claimed, dismissal of the charges against defendant is mandated. People v Joseph Bowman, ___ Mich App ___; ___ NW2d ___ (Docket No. 69453, decided May 7, 1991, 9:35 a.m.).

Then, however, on January 9, 1992, the Michigan Supreme Court summarily reversed the Michigan Court of Appeals' judgment and reinstated the conviction:

> In light of all these considerations, we are persuaded that the majority rule should be adopted in Michigan. We thus conclude that the Court of Appeals erred when it found that the defendant was no tried within the 180 day period stated in Article III(a) of the IAD. 439 Mich. 123-124.

Five Justices signed the majority opinion. The two Justices who dissented did so claiming: "Peremptory disposition is not appropriate." 439 Mich. 124.

ARGUMENT

BECAUSE PETITIONER WENT TO TRIAL WITHIN 180 DAYS AFTER RESPONDENT RECEIVED HIS REQUEST UNDER THE INTERSTATE AGREEMENT ON DETAINERS, HIS CONVICTION SHOULD NOT BE DISMISSED.

Although a number of reasons do in fact exist why this Court might want to grant certiorari in this case, respondent asks that it does not. The Michigan Supreme Court correctly analyzed the issues and properly rejected each of petitioner's arguments. In the present case, Article III's 180 day period began on September 26, 1988, when respondent received petitioner's request for speedy disposition. This Court has already said so, the Congressional history says so also, and the vast majority of jurisdictions in the country says so too. Further, because petitioner is trying to litigate facts not litigated in the trial court, this may not be the best case

anyway to address these issues.

To a certain extent, this case is directly controlled by this Court's language in Carchman v. Nash, 473 U.S. 716, 721 (1985), where this Court stated that the period in fact starts when the prosecutor receives the request:

> Specifically, Article III required the warden to inform the prisoner that a detainer has been lodged against him and that he may request final disposition of the indictment, information, or complaints upon which the detainer is based. If the prisoner makes such a request, the warden must forward it, along with a certificate providing certain information about the prisoner's terms of confinement, to the appropriate prosecuting official and court of the receiving State. The authorities in the receiving State then must bring the prisoner

to trial within 180 days absent good cause shown or the court must dismiss the indictment, information, or complaint with prejudice and the detainer will cease to be of any force or effect. (Emphasis added.)

Carchman is completely consistent with the legislative history. Senate Report No. 91-1356, 91st Congress, 2d Session, 3 U.S. Code Congressional & Administrative News, p. 4865 (1970), states:

> Under the agreement, prison authorities are required to inform prisoners of all indictments, informations, or complaints on the basis of which detainers have been lodged against them by other jurisdictions. Prisoners may then request trial on such pending charges. Any request is transmitted through the warden to the proper official in the other jurisdiction who then has 180 days to bring the prisoner to trial. (Emphasis added.)

This conclusion is further buttressed by the Deputy Attorney General's letter to Congress concerning the IAD which is found on page 4868 of the same Congressional Administrative News Report:

> Article III of the Agreement provides that the inmate may make a request for the disposition of all pending charges upon which detainers are based by applying to the officials in whose custody he is placed, and that application will be forwarded to authorities of the jurisdiction in which charges are pending. The person must be brought to trial within 180 days thereafter.

In fact, the vast majority of jurisdictions in this country have interpreted the 180 day period of Article III of the IAD as starting when the prosecutor received the request and not

when the defendant makes the request. In State v. Braswell, 194 Conn. 297, 481 A.2d 413, 417 (1984), cert. denied 469 U.S. 1112 (1985), the Connecticut Supreme Court ruled:

> Given the IAD's use of the word "sent" in subsection (b), we must presume that its use of the word "deliberate" in subsection (a) signifies its recognition of different meanings commonly attributed to each word. * * * It follows that had the IAD intended the 180 days disposition period to commence when the prison placed his or her request with the custodial officials, subsection (a) like subsection (b), would refer to the date on which the prison requests to be sent, rather than the day on which it was caused to be delivered.

Further, as stated in Young v. Mabry, 471 F. Supp. 553, 561 (E.D.Ark.1979), affd.

596 F.2d 339 (8th Cir. 1979), cert. denied 444 U.S. 853 (1979):

> The Court is satisfied that the plain language of Article III * * * leads to the conclusion that the date of the receipt of notice by the prosecuting authorities triggers the statutory period. The key word in the statutory language is "delivered" and comporting with the purpose of the notice provision, the term would have little meaning if something other than the receipt of the notice were contemplated.

Likewise, as ruled by the New Jersey Superior Court in State v. Ternaku, 156 N.J. Super. 30, 383 A.2d 437, 439 (1978):

> The language of the statute is explicit. It provides for the commencement of the 180-day period when defendant has "caused to be delivered to the prosecuting officer and the appropriate court"

the written notice and request for final disposition of the pending indictment. The Legislature clearly intended that the documents be delivered to the prosecutor and the appropriate court and the 180-day period starts to run. The period does not start to run upon mere execution and delivery of the notice and request to the warden, commissioner of corrections or other person, having custody of defendant. In our view, it would be contrary to the public interest to start the running of the 180-day period prior to actual receipt of the notice and request by the prosecutor and the court. If we were to interpret the statute as defendant requests, an indictment would be subject to dismissal each time delivery of the documents to the prosecutor

and court is delayed regardless of cause. We cannot conceive our Legislature as intending such a result by enacting the Interstate Agreement on Detainers. As a matter of fact, if the Legislature intended the 180-day period to begin from the time the defendant delivers the notice to the warden, commissioner of corrections or other official having custody over him, it would have so signified by appropriate language.

Many other cases as well have ruled (or at least have stated) that the trigger date for the 180-day period is the date that the prosecutor receives the request from the warden and not the date that the inmate gives the request to the warden. Among these cases are: United States v. Nesbitt, 852 F.2d 1502, 1516 (7th Cir. 1988), cert. denied 488 U.S. 1015 (1989); Casper v. Ryan, 822 F.2d 1283, 1291 (3rd Cir. 1987), cert. denied 484 U.S. 1012

(1988); Browning v. Foltz, 837 F.2d 276, 283 (6th Cir. 1988), cert. denied 488 US 1018 (1989); United States v. Ricketson, 498 F.2d 367 (7th Cir. 1974), cert. denied 419 U.S. 965 (1974); Beebe v. Vaughn, 430 F. Supp. 1220 (D.Del. 1977); Soffield v. State, 521 So.2d 1368, 1370 (Ala.Crim.App. 1987); Spears v. State, 280 Ark. 577, 660 S.W.2d 913 (1983); People v. Wilson, 69 Cal.App.3d 631, 138 Cal.Rptr. 259 (1977); People v. Bielecki, 41 Colo.App. 256, 588 P.2d 377, 378 (1978); State v. Minnick, 413 So.2d 168, 169 (Fla.App. 1982); Thompson v. State, 186 Ga.App. 379, 367 S.E.2d 247, 249 (1988); Holland v. State, 265 Ind. 216, 352 N.E.2d 752, 757 (1976); State v. White, 234 Kan. 340, 673 P.2d 1106, 1110 (1983); Hines v. State, 58 Md.App. 637, 473 A.2d 1335, 1341 (1984); State v. Walton, 734 S.W.2d 502, 504 (Mo. 1987); State v. Grant, 227 Mont. 181, 738 P.2d 106, 110 (1987); People v. Vrlaku, 73 N.Y.2d 800, 537 N.Y.S.2d 24, 533 N.E.2d 1053, 1054 (1988); State v. Reitz, 26 Ohio App.3d 1, 26 Ohio

Br. 168, 498 N.E.2d 163, 164 (1984); State v. Arwood, 46 Or. App. 653, 612 P.2d 763, 764 (1980); Commonwealth v. Fisher, 451 Pa. 102, 301 A.2d 605, 606 (1973); State v. Default, 540 A.2d 355, 356 (R.I. 1988); State v. Moore, 774 S.W.2d 590, 595 (Tenn. 1989).

As noted above, on the other hand, the Michigan Court of Appeals completely ignored all of these cases. Yet, these cases constitute the majority view. Anno: Validity, Construction, and Application of Interstate Agreement on Detainers, 98 A.L.R.3d 160, 208.

The Michigan Supreme Court on the other hand, noted each of these points in summarily rejecting petitioner's claims. It first looked at the actual language of the statute itself:

> In Article III(b) the IAD states a prisoner's duty to give or send the request to the prison authorities who are holding him. Similar language, which would

> indicate that the 180-day period runs from the date the request is given or sent to prison authorities, could easily have been employed in Article III(a), if the drafters had been so inclined. Instead, the period runs from the time when the prisoner has caused <u>delivery</u>, which is actual receipt. 439 Mich. 120.

Then, it quoted from this Court's language in <u>Carchman</u>, <u>supra</u>, 473 U.S. 721. 439 Mich. 120. Then, it quoted from the United States Senate Judiciary Committee's report. 439 Mich. 121. Last, it quoted <u>Moore</u>, <u>supra</u>, 774 S.W.2d 595 in noting that the vast majority of jurisdictions has interpreted the IAD this way. 439 Mich. 121-122. It even stated:

> An obvious purpose of an interstate agreement is to achieve a uniform body of law in the jurisdictions that have enacted

> the agreement. Absent sound reasons to the contrary, it is therefore sensible to interpret such an agreement in the same manner as a majority of other jurisdictions. 439 Mich. 121, fn. 5.

On the other hand, in reality, petitioner does not explain why the 180-day period should begin earlier. He cites to neither the statute's language nor to any policy reason why the Michigan Supreme Court may have misinterpreted this interstate compact. Instead, to a very large extent, he is trying to turn this Court into a fact finding court. As he knows, the IAD is not triggered until a detainer has been filed. <u>United States v. Mauro</u>, 436 U.S. 340 (1978). Accordingly, he tries to argue that a detainer was filed against him in the Indiana prison long before the prison authorities gave him his papers. Other than his own speculation, however, he points to absolutely nothing in

the record to back up this factual assertion. Respondent, on the other hand, has consistently denied this factual assertion. As it was, petitioner did not even try to litigate this issue properly in the Michigan courts. He made no such assertion whatsoever at the trial level, instead relying almost exclusively on his claim that the IAD begins the date that the prison authority mails to the prosecutor the Article III request. Not until the appeal did he start making these particular factual arguments. At no time has he has ever presented any evidence whatsoever to back up these factual claims. Yet, a criminal defendant has the burden of proving an IAD violation. Seymour v. Alabama, 846 F.2d 1355 (11th Cir. 1988). Petitioner has not in the least proven that respondent sent a detainer earlier. This Court should not now become a fact finding court. To do so would violate federal/state comity.

In any event, respondent was in the

Fort Wayne jail in Indiana for some of the time before petitioner sent the detainer. The IAD does not apply if the inmate is incarcerated in a jail awaiting sentence as opposed to a prison after sentence. United States v. Glasgow, 790 F.2d 446, 448 (6th Cir. 1985) cert. denied 475 U.S. 1124 (1986); United States v. Roberts, 548 F.2d 665, 671 (6th Cir. 1977), cert. denied 431 U.S. 931 (1977).

Respondent's other argument, that the Indiana authorities took too long in forwarding the request to the prosecutor, is also without merit. He cites absolutely nothing to support his claim that, at most, a few days delay should somehow change the date that the 180-day period should start. In fact, he is being unreasonable. The prison must do a number of things once it receives an inmate's request. It must make up a certificate which tells the requesting prosecutor the terms of the inmate's present commitment, the time that he has served, the time that he has left

remaining, the amount of good time, his parole eligibility, and the State's decisions on parole. He must then send to the prosecutor a written notice and a certificate. As it was, petitioner was certainly not the only inmate in the Indiana Westville Correctional Facility at the time. Under the circumstances, 15 days is reasonable.

In any event, whether 15 days is reasonable or not is really a factual determination. Once again, petitioner has never even requested any kind of an evidentiary hearing on this point. Once again, his request that this Court become a fact finding court would violate federal/state comity.

In any event, petitioner's argument on this point would make the IAD very difficult to administer. Once a prosecutor receives the Article III request, he must schedule everything to ensure that trial begins within the 180-day period. Under petitioner's interpretation, however, the

prosecuting attorney would never really know for sure just when this period begins. How does the prosecutor ever know that the sending prison took too much time in dealing with the paper work? The Michigan Supreme Court's interpretation far better promotes efficiency. Petitioner's interpretation would lead to a windfall for criminal defendants.

On the other hand, respondent does concede that this Court may wish to grant certiorari in this case. As petitioner points out, a split in the jurisdictions presently exists on this issue (though the vast majority supports the Michigan Supreme Court). This Court may wish to resolve that split. Further, unlike most federal questions, this is petitioner's last chance to have this issue reviewed. At least in the Sixth Circuit, IAD claims are not cognizable under 28 U.S.C. sec. 2254. Browning, supra.

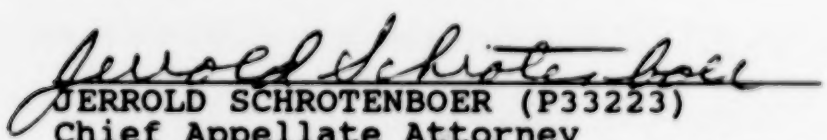
Yet, despite these considerations, respondent asks this Court to deny this

petition. The Michigan Supreme Court's decision is too obviously correct. Further, petitioner is relying too much on facts not on the record.

Last, at the very least, should this Court in fact reverse, a discharge is not necessarily proper (at least yet). Respondent raised a waiver issue in the Michigan Supreme Court which was never addressed. By never demanding to be tried within 180 days, petitioner waived the IAD speedy trial provision. Williams v. State, 533 N.E.2d 1193 (Ind. 1989). If this Court should reverse, the proper procedure would be to remand back to the Michigan Supreme Court to consider the remaining issue.

WHEREFORE, respondent asks this Court to deny this petition for a writ of certiorari.

Respectfully submitted,



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Supreme Court, U.S.
FILED
JUL 23 1992
OFFICE OF THE CLERK

No. 91-7873

In The

Supreme Court of the United States

October Term, 1992

WILLIAM FEX,

Petitioner,

v.

MICHIGAN,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Michigan

JOINT APPENDIX

JOHN B. PAYNE, JR.*
(Appointed by this Court)
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Dearborn, Michigan 48124
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Petition For Writ Of Certiorari Filed April 7, 1992
Certiorari Granted May 18, 1992

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RELEVANT DOCKET ENTRIES

COMPLAINT	12/8/87
INFORMATION FILED	11/23/88
ARRAIGNMENT	11/29/88
PRETRIAL	12/28/88
MOTION TO DISMISS VIOLATION OF INTERSTATE AGREEMENT	3/15/89
WRIT OF HABEAS CORPUS FILED	3/17/89
TRIAL	3/23/89
SENTENCING	4/20/89
NOTICE OF APPEAL FILED	7/11/91

COMBINATION CRIMINAL SET

STATE OF MICHIGAN
THE DISTRICT COURT – JUDICIAL DISTRICT NO. 12th
County of JACKSON **COMPLAINT** CASE NO. 88270FY

THE PEOPLE OF THE STATE OF MICHIGAN vs. WILLIAM FEX W/M DOB: 11/07/66 (Fort Wayne, Indiana Jail) 3555 Dalton Road Rives Junction, MI CTN: 3888-001421-01 JCPD #87-30607 Defendant(s)	Date of Offense On or about December 8, 1987 Location City of Jackson Complainant Det. Michael Rand Complaining Witness Det. Michael Rand

STATE OF MICHIGAN)
) ss.
County of JACKSON)

The above-named COMPLAINING WITNESS being duly sworn before the undersigned Judge, Magistrate, or Clerk of the District Court, upon the date indicated below, says that heretofore on the DATE OF OFFENSE listed above, at the LOCATION listed above in the said County, State of Michigan, the above-named Defendant(s),

COUNT I: did assault a certain person, to-wit: Lee J. Stapleton, while being armed with a dangerous weapon, or an article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon, to-wit: a gun, and did then and there feloniously rob, steal and take from the person of said victim, or in his/her presence certain property, to-wit: money; contrary to MCL. 750.529; MSA 28.797. [750.529]

COUNT II: did make an assault upon Lee J. Stapleton with a dangerous weapon, to-wit: a long gun, but without intending to commit the crime of murder or to inflict great bodily harm less than the crime of murder; contrary to MCL 750.82; MSA 28.277. [750.82].

COUNT III: did carry or have in his/her possession a firearm, to-wit: a long gun, at the time he/she committed or attempted to commit a felony, to-wit: armed robbery and/or assault with a dangerous weapon; contrary to MCL 750.227b; MSA 28.424(2). [750.227B-A]

WARRANT AUTHORIZED BY
/s/ Jerard M. Jarzynka
P35496 Assistant Prosecuting Attorney
contrary to the form of the statute in such case made and provided, etc.

WHEREFORE, the said Complaint prays that the said Defendant(s) may be apprehended and held to answer this Complaint and further dealt with in relation to the same as law and justice may require.

Dated February 29, 1988
No. _____

Subscribed and Sworn to on this day by
/s/ Michael Rand
Complaining Witness

/s/ James M. Justin
Before the above-named
District Judge/Deputy
Clerk/Magistrate

Agreement on Detainers: Form I

IN DUPLICATE, ONE COPY OF THIS FORM, SIGNED BY THE PRISONER AND HE WARDEN SHOULD BE RETAINED BY THE WARDEN. ONE COPY, SIGNED BY THE WARDEN SHOULD BE RETAINED BY THE PRISONER.

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

Inmate *William Fex* No. *883595* Inst. *Westville Correctional Center*

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contexts of each.

Cause 88-270 FY Armed Robbery
Assault with a Deadly Weapon
Felon in Possession of a Firearm

You are hereby further advised that by the provision of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provision of the Agreement, after you have caused to be delivered to said prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the

court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify G. Michael Broglin, Superintendent of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Governor of this state to disapprove any such request for your temporary custody

t/but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery. You are also statutorily entitled to the procedural protections provided in state extradition laws.

DATED: *9/7/88*

O/S William J. Fex DOC 883595

BY: *O/S G. Michael Broglin*
WARDEN -
SUPERINTENDENT -
DIRECTOR
G. Michael Broglin,
Superintendent

RECEIVED:

DATE: _____

_____

SUPPLEMENT TO FORM I, AGEEMENT ON DETAINERS

In the event that the prosecuting officer of a jurisdiction in which any such indictment, information, or complaint is pending institutes proceedings to obtain a final disposition thereof, you are statutorily entitled to the procedural protection provided in the Indiana Uniform Criminal Extradition Act, IC 35-33-10-3.

DATED: *9/7/88*

Name: *O/S William J. Fex, DOC 883595*

BY: *O/S F. Michael Broglin*
(Superintendent – Director)

Received: _____

Date: _____

_____

FIVE COPIES, IF ONLY ONE JURISDICTION WITHIN THE STATE INVOLVED HAS AN INDICTMENT, INFORMATION OR COMPLAINT PENDING. ADDITIONAL COPIES WILL BE NECESSARY FOR PROSECUTING OFFICIALS AND CLERKS OF COURT IF DETAINERS HAVE BEEN LODGED BY OTHER JURISDICTIONS WITHIN THE STATE INVOLVED. ONE COPY SHOULD BE RETAINED BY THE PRISONER. ONE SIGNED COPY SHOULD BE RETAINED BY THE WARDEN. SIGNED COPIES MUST BE SENT TO THE AGREEMENT ADMINISTRATOR OF THE STATE WHICH HAS THE PRISONER INCARCERATED, THE PROSECUTING OFFICIAL OF THE JURISDICTION WHICH PLACED THE DETAINER, AND THE CLERK OF THE COURT WHICH HAS JURISDICTION OVER THE MATTER. THE COPIES FOR THE PROSECUTING OFFICIALS AND THE COURT MUST BE TRANSMITTED BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED.

INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: Joseph Filip, Prosec. Atty.,
12th Judicial District
Prose. Officer Jackson County
Court Jackson, Michigan

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

You are hereby notified that the undersigned in now imprisoned in *Westville Correctional Center* at *Westville, Indiana* and I hereby request that a final disposition be made of the following indictments, informations or complaints now pending against me:

Cause 88-270 FY Armed Robbery
Assault with a Deadly Weapon
Felon in Possession of a Firearm

Failure to take action in accordance with the Agreement on Detainers, to which your state is committed by law, will result in the invalidation of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition with respect to any charge or proceeding contemplated hereby or included herein, and waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute a consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which I now am confined.

If jurisdiction over this matter is properly in another agency, court or officer, please designate the proper agency, court or officer and return this form to the sender.

The required Certificate of Inmate Status and Offer of Temporary Custody are attached.

DATED: *9/7/88* *O/S William J. Fex, DOC 883595*

(Inmate's name and number)

The inmate must indicate below whether he has counsel or wishes the court in the receiving state to appoint counsel for purposes of any proceedings preliminary to trial in the receiving state which may take place before his delivery to the jurisdiction in which the indictment, information or complaint is pending. Failure to list the name and address of counsel will be construed to indicate the inmate's consent to the appointment of counsel by the appropriate court in the receiving state.

A. My counsel is_____
NAME OF COUNSEL

whose address is_____
STREET. CITY AND STATE

B. I request the court to appoint counsel, *O/S William J. Fex, 883595* (Inmate's signature)

_____

Agreement on Detainers: Form III

IN THE CASE OF AN INMATE'S REQUEST FOR DISPOSITION UNDER ARTICLE III, COPIES OF THIS FORM SHOULD BE ATTACHED TO ALL COPIES OF FORM II. IN THE CASE OF A REQUEST INITIATED BY A PROSECUTOR UNDER ARTICLE IV, COPY OF THIS FORM SHOULD BE SENT TO THE PROSECUTOR UPON RECEIPT BY THE WARDEN OF FORM V. COPIES ALSO SHOULD BE SENT TO ALL OTHER PROSECUTORS IN THE SAME STATE WHO HAVE LODGED DETAINERS AGAINST THE INMATE. A COPY MAY BE GIVEN TO THE INMATE.

CERTIFICATE OF INMATE STATUS

RE: William Fex (inmate) 883595 (number)

Westville Correctional Center (institution) Westville, Indiana (location)

The [custodial authority] hereby certifies:

1. The term of commitment under which the prisoner above named is beig held: two six (6) year concurrent sentences
2. The time already served: 224 days as of 9/12/88
3. Time remaining to be served on the sentence: 1,743 days as of 9/12/88
4. The amount of good time earned: Presently in credit class I

5. The date of parole eligibility of the prisoner: 1/31/91
6. The decisions of the Board of Parole relating to the prisoner: (if additional space is needed use reverse side) N/A
7. Maximum expiration date under present sentence: 1/30/94
8. Detainers currently on file against this inmate from your state are as follows:

   Cause 88-270 FY Armed Robbery

   Assault with a Deadly Weapon

   Felon in Possession of a Firearm

DATED: *9/7/88*

Westville Correctional Center

BY: *O/S G. Michael Broglin*

Warden - Superintendent - Director

G. Michael Broglin, Superintendent

EXPLANATION OF RIGHTS UNDER ARTICLE IV
OF AGREEMENT ON DETAINERS

* * *

1. You have the right to challenge a request for temporary custody (Form V) in a court of law in this county.
2. You have the right to contest your delivery pursuant to a request for temporary custody (Form V) on the grounds that:
   a. the detainer documents on their face are not in order;
   b. you have not been charged with a crime in the requesting jurisdiction;
   c. you are not the person named in the detainer; or,
   d. you are not a fugitive.

If you wish to waive these statutory rights, you may do so by signing a Form V-A, a copy of which will be provided to you upon request.

By signing this page, you are only acknowledging that you have been offered a copy. You are not waiving any right that you have and are not agreeing to the request for temporary custody.

/s/ William J. Fex
Name

DOC 883595
Institution #

09-07-88
Date

/s/ Illegible
Witness

FORM V-A

PRISONER'S AGREEMENT TO TEMPORARY
TRANSFER OF CUSTODY

I, William Fex, 883595
(Prisoner's Full Name) (Institution #)

am currently incarcerated at Westville Correctional Center
(Institution)

P.O. Box 473, Westville, Indiana 46391
(Address)

Without admitting my guilt or innocence, I acknowledge that I am the same person named in the attached request for temporary custody (Form V). I understand that I am entitled to challenge that request for temporary custody in a court of law in this county. I have also been advised that the Governor may intercede in my behalf within thirty (30) days of the request for temporary custody. I wish to waive my right to challenge the request for temporary custody in a court of law, and agree to waive the thirty (30) day period so that I may be transferred as soon as possible.

I also agree that this agreement shall be a waiver of extradition with respect to any charge or proceeding contemplated hereby, and a waiver of extradition to the requesting state to serve any sentence imposed upon me, after completion of my term of imprisonment in this state.

/s/ William J. Fex DOC 883595
Signed

09-07-88
Dated

/s/ Illegible
Witness

Agreement on Detainers: Form IV

In the case of an inmate's request for disposition under Artile III, copies of this Form should be attached to all copies of Form II. In the case of a request initiated by a prosecutor this Form should be completed after the Governor has indicated his approval of the request for temporary custody or after the expiration of the 30 day period. After expiration of the 30 day period, copies of this Form should then be sent to all officials who previously received copies of Form III. One copy also should be given to the inmate and one copy should be retained by the warden. Copies mailed to the prosecutor should be sent by certified or registered mail, return receipt requested.

OFFER TO DELIVER TEMPORARY CUSTODY

Date: *September 9, 1988*

TO: *Joseph Filip, Prosecuting Attorney* Prosecuting Officer
Jackson County, Jackson, Michigan

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

RE: *William Fex* Number: *883595*

Dear Sir:

Pursuant to the provisions of Article V of the Agreement on Detainers between this state and your state, the undersigned hereby offeres to deliver temporary custody of the above-named inmate to the appropriate authority in your

state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is (described in the attached inmate's request) (described in your request for custody of _____)

(The required Certificate of Inmate Status is enclosed.) (The required Certificate of Inmate Status was sent to you with our letter of _____).

If proceedings under Article IV(d) of the Agreement relative to extradition are indicated, an explanation is attached.

Indictments, informations or complaints charging the following offenses also are pending against the inmate in your state and you are hereby authorized to transfer the inmate to custod of appropriate authorities in these jurisdiction for purposes of disposing of these indictments, informations or complaints.

Offense	County or Other Jurisdiction
Cause 88-270 FY Armed Robbery	*Jackson County, Jackson, Michigan*
Assault with a Deadly Weapon	
Felon in Possession of a Firearm	

If you do not intend to bring the inmate to trial, will you please inform us as soon as possible?

Kindly acknowledge.

Westville Correctional Center

BY: *O/S G. Michael Broglin*

Warden - Superintendent - Director

G. Michael Broglin, Superintendent

P.O. Box 473, Westville, Indiana 46391

A. My counsel is _____
NAME OF COUNSEL

whose address is _____
STREET. CITY AND STATE

B. I request the court to appoint counsel, *O/S William J. Fex, 883595* (Inmate's signature)

INDIANA DEPARTMENT OF CORRECTION
WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391 - 0473
Release Office

Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

State Form 2394R3

STATE OF INDIANA

DEPARTMENT OF CORRECTION

September 20, 1988 WESTVILLE CORRECTIONAL CENTER

Kim Best
Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

Re: William Fex
883595

Enclosed please find the Interstate Agreement on Detainers requesting disposition on the stated cause(s) regarding the above captioned subject.

Sincerely,

/s/ Roy A. Smith
Roy A. Smith

Correctional Release Coordinator

Encl.

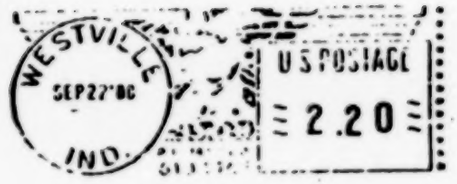
9-30-88

The Defendant has not been arraigned on this charge as of 9-30-88, in the 12th. District Court. If you have any questions, please call. 517-788-4260.

Rosalie Steffes
Deputy Clerk

INDIANA DEPARTMENT OF CORRECTION
WESTVILLE CORRECTIONAL CENTER
Post Office Box 473
Westville, Indiana 46391 - 0473
RElease Office

CERTIFIED
P 956 212 004
MAIL



Kim Best
Clerk of the Court
12th Judicial District Court
312 S. Jackson St.
Jackson, MI 49201

Return Receipt Requested

State Form 2384R2

MICHIGAN DEPARTMENT OF CORRECTIONS

EVIDENCE OF AGENT'S AUTHORITY TO ACT FOR RECEIVING STATE

AGREEMENT ON DETAINERS: Form VI

IN QUADRUPLICATE, ALL COPIES, SIGNED BY THE PROSECUTOR AND THE AGENT SHOULD BE SENT TO THE ADMINISTRATOR OF THEIR OWN STATE. AFTER SIGNING ALL COPIES, THE ADMINISTRATOR SHOULD RETAIN ONE FOR HIS FILES, SEND ONE TO THE WARDEN OF THE INSTITUTION IN WHICH THE PRISONER IS LOCATED AND RETURN TWO COPIES TO THE PROSECUTOR WHO WILL GIVE ONE TO THE AGENT FOR USE IN ESTABLISHING HIS AUTHORITY AND PLACE ONE IN HIS FILES.

TO: G. Peter Chatfield *Deputy*
(ADMINISTRATOR OF THE AGREEMENT ON DETAINERS)

William Fex is confined in
(INMATE)

Westville Correctional Center
(INSTITUTION)

P.O. Box 473, Westville, IN 46391-0473
(ADDRESS)

and will be taken into custody at the institution on 10-25-88

for return to this jurisdiction for trial on or about March 15, 1988

In accordance with Article V(b), I have designated Jason D. Hall

whose signature appears below as agent to return the prisoner.

/s/ Jerrold Schrotenboer
SIGNATURE: (Prosecuting Official)

/s/ Jason D. Hall
SIGNATURE: (Agent)

TO: Warden

In accordance with the above representation and the provisions of the Agreement on Detainers,

Jason D. Hall is hereby designated as agent for
(AGENT)

this state to return William Fex for trial.
(INMATE)

/s/ G. Peter Chatfield
Deputy Administrator
G. Peter Chatfield

MICHIGAN DEPARTMENT OF CORRECTIONS PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER

AGREEMENT ON DETAINERS: Form VII

IMPORTANT: THIS FORM SHOULD ONLY BE USED WHEN AN OFFER OF TEMPORARY CUSTODY HAS BEEN RECEIVED AS THE RESULT OF A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER. IF THE OFFER HAS BEEN RECEIVED BECAUSE ANOTHER PROSECUTOR IN YOUR STATE HAS INITIATED THE REQUEST, USE FORM VIII. COPIES OF FORM VII SHOULD BE SENT TO THE WARDEN, THE PRISONER, THE OTHER JURISDICTIONS IN YOUR STATE LISTED IN THE OFFER OF TEMPORARY CUSTODY, AND THE AGREEMENT ADMINISTRATOR OF THE STATE WHICH HAS THE PRISONER INCARCERATED. COPIES SHOULD BE RETAINED BY THE PERSON FILING THE ACCEPTANCE AND THE JUDGE WHO SIGNS IT.

TO: G. Michael Broglin Westville Correctional Center
(WARDEN, SUPERINTENDENT, DIRECTOR) (INSTITUTION)

P.O. Box 473, Westville, IN 46391-0463
(ADDRESS)

In response to your letter of 9/20/88 (DATE) and offer of temporary custody regarding William Fex (NAME OF PRISONER) who is presently under indictment, information, complaint in the County of Jackson (JURISDICTION) of which I am Prosecuting Attorney, (TITLE OF PROSECUTING OFFICER) please be advised that I accept temporary custody and that I propose to bring this person to trial on the indictment, information or complaint named in the offer

within the time specified in Article III(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction, I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

COMMENTS: (If your jurisdiction is the only one named in the offer to temporary custody, use the space below to indicate when you would like to send your agents to conduct the prisoner to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the space below to make inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard.)

SIGNATURE

/s/ Joseph A. Filip

TITLE

Prosecuting Attorney

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action

in accordance with its terms and the provisions of the Agreement on Detainers.

DATED

10/20/88

SIGNATURE: (Judge)

/s/ James M. Justin

COURT:

Twelfth District Court

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF JACKSON

THE PEOPLE OF THE STATE
OF MICHIGAN

vs. FILE NO. 88-49555-FC

WILLIAM FEX,

Defendant.

_____/

[p. 3] THE COURT: In the matter of the People versus William Fex, File 88-49555-FC. Mr. Jacobs, I believe you had a motion in this matter?

MR. JACOBS: That's correct, Your Honor. It would be a motion under the Interstate Agreement on detainers as it applies to this particular matter. Mr. Fex is presently charged with an offense that occurred I believe it was December, 1987. After the offense occurred, it became apparent to the Jackson City Police that from information received from Indiana authorities that Mr. Fex was a suspect and he was in Indiana custody pending trial in the Indiana courts. Pursuant to the information a warrant was issued on February 29th of 1988, on the offense in this matter. Mr. Fex informs me he was sentenced on April 23, 1988, in Indiana to serve a term there, and in talking to the detective and the prosecutor apparently there was a detainer placed on him shortly thereafter sometime. The prosecutor's records do not indicate exactly when that would be.

Mr. Fex was first advised of a detainer and his rights under there and the right to disposition under the [p. 4] detainer on September 7, 1988, and when he signed the forms that have been attached to the prosecutor's answer those were signed and with the consent of the Indiana authorities at that time and the prison authorities there in Indiana. The dates in this matter become crucial. He signed the request for disposition on September 7, 1988. On September 9, 1988, there's a letter attached to the prosecutor's answer from Michael Broglin, Superintendent of the Westville Correctional Center to Joseph Filip it's dated September 9, 1988, regarding Mr. Fex and the documents that he signed. Now whether that was transmitted to Mr. Filip at that time, I don't know. There was another letter sent from the Indiana Prison authorities on September 20th or dated September 20, 1988, which was then apparently postmarked September 22, 1988, and appears to have been received here in Jackson on September 26, 1988.

Pursuant to the requests that were made, the prosecutor then filed an acceptance of custody on October 20, 1988, and the Defendant was picked up by the Jackson City Police from Indiana authorities and returned to this date on October 26, 1988.

Your Honor, there's three problems that we have in this matter concerning violations of the interstate agreement on detainers. The first is in regards to the case of *People versus Marshall* and I have that cite here.

[p. 5] MR. POLESKI: *Marshall* is cited in our answer, Your Honor, in the trial brief that we filed.

THE COURT: Thank you.

MR. JACOBS: Your Honor, in that case the Court held that a defendant complies with the notice requirements under Article III(a) of the Interstate Agreement on Detainers when he serves his disposition request to – and in that case it was a Wisconsin Prison authorities – in this case it would be the Indiana Prison authorities. Pursuant to the ruling in that case then September 7th would, in fact, be the date that the time limits start to run because that's when the request was signed and served on the Indiana Prison authorities. If we use that date, then the 180 days under the statute ended March 6, 1988, and this matter is past that date.

In addition, there's the problem that as to when the detainer was placed on there because the Indiana authorities have a requirement under the Interstate Agreement on Detainers once a detainer is placed to immediately inform the defendant of his right to Request Disposition. If, in fact, it was placed on him shortly after he was sentenced back in April of 1988, it was almost six months until he was informed of his rights by the Indiana authorities. That time should also be considered then because he could have made the request much sooner. [p. 6] It's our position that as far as the 180 days part of it that provision it is already expired.

The other problem that arises in this case is that even not considering the 180-day time limitation there is another time limitation set forth in the Interstate Agreement on Detainers and that one is 120 days from the time that the defendant is transferred into the jurisdiction of the receiving state.

In that case he was transferred here on October 26, 1988, and the 120 days expired back in February of this year.

Pursuant to that I would cite the case of *People versus Harlan*. In that case the defendant was transferred from another state to the Federal authorities in Milan, Michigan. When he was received at Milan the State of Michigan put a detainer on him and, of course, as the Kent County Prosecutor filed a detainer request for the Milan Prison officials. On March 10, 1981, the defendant was turned over to the State of Michigan state authorities and it goes on the 120-day limit began to run when the defendant was turned over to the Michigan authorities on March 10, 1981. The transfer of jurisdiction in this matter took place on October 26th. It's our position that pursuant to that case they have to try within 180 days – or 120 days.

I would also cite to the Court *People versus* [p. 7] *Webster* which is 130 Mich App 442, and again on that case the defendant was incarcerated on felony charges in Indiana. Shortly after his incarceration the defendant requested disposition of the Michigan charge pursuant to Article III(a), which is the same procedure that we have here. The defendant was returned to Michigan on January 12, 1982. Article IV(c) of the Interstate Agreement requires that trial be commenced within 120 days of arrival of the prisoner in the receiving state. In that case trial was not commenced and they held that the matter must be dismissed.

Your Honor, the prosecutor has filed an answer indicating that that section regarding the 120 days shouldn't apply to this matter as the Request was made by the

defendant and not by the prosecutor. I submit it makes – there is no logical reason to make a differentiation whether the prosecution makes a request or the defendant makes a request. When the prosecutor files his acceptance of custody, that, in fact, is the same thing as we're requesting to take his custody at this time. That was filed on October 20th. So even if the prosecutor argues that they made a Request on October 20th for the custody and he was returned on the 26th and the 120 days has expired.

Article V(c) indicates that if there are [p. 8] appropriate authorities shall refuse or fail to accept temporary custody or in the event that an action on the indictment or complaint if not brought to trial within the period provided in Article III or Article IV, hereof, the appropriate court of jurisdiction where the indictment has been pending shall be dismissed with prejudice. That Article indicates that the time limits apply, both time limits, both in Article III the 180 days and the time limit of 120 days after they receive custody. So it's our position that this matter must be dismissed as they have violated the terms of the Interstate Agreement on Detainer.

THE COURT: Thank you. Mr. Poleski?

MR. POLESKI: Thank you. I agree with Mr. Jacobs as far as the factual matters here are concerned. I disagree with him however as far as the application of the law is concerned.

We're dealing with two articles of the Interstate Agreement on Detainers. Under Article III the 180-day time period is triggered when the defendant files his Request for final disposition.

Under Article IV 120 days is triggered when the prosecutor files a request. The 120 days under Article IV is limited to Article IV, because in paragraph (c) it says this. "In respect of any proceeding made possible by 'this' Article, which is Article IV, trial shall be commenced [p. 9] within 120 days." The People are of the opinion and present to the Court that 120 days is not applicable in this case because the prosecutor did not Request the extradition of this gentleman under the Interstate Agreement on Detainers. The Request came from him rather than from the prosecuting authorities so Article IV does not apply at all.

Under Article III 180 days applies from the date on which the Request is received by the prosecuting attorney and the courts where the charges are filed. The 180 days would then have begun to run on September 26, 1988, when it is conceded the Request was received by both the prosecuting attorney's office and by the courts. The court file contains a block stamped letter that Mr. Jacobs makes reference to regarding being postmarked September 22nd and it's stamped September 26th. So it's the position of the People that September 26th is the triggering date for the 180 days. When 180 days is calculated from September 26th, we are within that date as of today.

I've cited in my trial brief authority for that. That exact question was presented to the Federal Courts and the Federal Courts have stated that it is the receipt of the Request by the prosecutor and the courts would charge there pending that charges the 180 days. On that basis we contend that both Articles do not bar the trial here. The 120 days does not apply and we are within 180 days of [p. 10] the appropriate time so on that basis, Your Honor, I

request that the motion be denied and we proceed to trial.

THE COURT: Thank you. Anything further, Mr. Jacobs?

MR. JACOBS: Your Honor, I would just in addition cite the case of *People versus Office* 126 Mich App 597. That case deals with the other problem that I referred to as to when the detainer was placed and when the defendant was advised of his rights under the detainer act. That case indicated that a letter sent to the Wisconsin State Prison constituted a detainer and that the failure of the Wisconsin prison authorities to advise the defendant of his rights immediately as required by the Interstate Agreement violated his rights under that Act and that in that matter the case then had to be dismissed. So I would additionally cite that.

The only other thing I would state, Your Honor –

THE COURT: Before we leave that, do you have anything to show when the Notice of Detainer was sent to the Indiana authorities?

MR. JACOBS: Your Honor, I've asked the prosecutor if he has that information and I have nothing.

MR. POLESKI: Our file does not – it might be in the appeals file downstairs. I didn't know that that was going to be an issue raised so I wasn't prepared to respond [p. 11] to that. I don't see where that triggers anything.

THE COURT: An appeal file?

MR. POLESKI: It would be held by our appellate division. Mr. Schrotenboer takes care of our interstate matters. It's not contained in the trial file so I don't have it here. I'm sure a detainer was filed but I don't know at this point. I didn't know that was going to be an issue this morning. I don't think it is an issue to be quite frank because the Interstate Agreement on Detainers only triggers one of two ways. The defendant requests for a final disposition of the prosecutor asks for temporary custody.

MR. JACOBS: Well, Your Honor, that is not what the Court of Appeals has ruled, however.

THE COURT: The Court has studied since receiving the pleadings of counsel and also gave some thought as to different time periods involved in this matter. In Article IV where the Request is initiated by the prosecuting attorney, the trial must start within 120 days after defendant is in the state. Where the prisoner makes the Request for final disposition, there's 180 days limitation, and it appears to the Court that the difference although there is no authority for it and have tried to find some reason for it if the prisoner makes the Request, the prosecution may not be ready to proceed and may need extra [p. 12] time to prepare for trial, therefore, the 180 days is allowed. If the prosecutor makes a Request to have the prisoner brought, it's assumed that he's ready to proceed and, therefore, the shorter period of 120 days. It's clear there is a different limitation of time depending on who initiates the Request. If the prisoner requests it, it's 120 days. If the prosecutor requests it, it's 180 days. In this case the matter was initiated here by the prisoner, so the Court would rule that the 180-day rule applies, and the Court is counting up the days here and apparently

has 182 days in this matter since the 26th of September received of '88 that the notice was received and that is by the way when the time is triggered by receipt of the notice by the prosecutor otherwise you'd have no way of knowing that the matter was in process and he could be depriving the People of their rights to prosecution without ever being aware that the matter was received so it makes sense for us to have that date to start our time running here leaves 182 days as the Court file reflects to today. We have a delay of seven days because the transcript would not be ready for the arraignment in circuit court and that seven-day delay was not the fault of the prosecutor nor the defendant but because the reporter was not able to get the transcript out in one week so that was a seven-day delay there which [p. 13] would take away from the 182 and leaves us with 175 days.

MR. POLESKI: Excuse me, Your Honor, does the Court calculate 182 days until today? I calculate 177 days until today. February only had 28 days this year.

THE COURT: That's right.

MR. POLESKI: Is my calculation in error?

THE COURT: Start off with September 26th of 1988.

MR. POLESKI: That's correct, sir.

THE COURT: I see my first mistake. I started off with nine days in September and that would not be correct. It's an error. We're under 177 days to today. Thank you.

Relative to the argument that there is a delay of notification, the Court really has nothing before it to say

that there was a delay so the Court will have to deny that part of the argument.

The Court has another trial in progress so we'll pick the jury in this matter and then recess and complete that trial. Hopefully the trial will be completed earlier today so that we can commence on our proofs late today.

MR. POLESKI: Your Honor, as a preliminary matter I'd ask if there are any names of defense witnesses that should be made available to the Court for the jury for voir dire.

MR. JACOBS: There are none, Your Honor.

* * *

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

June 21, 1991
No. 119192

v

WILLIAM FEX,
Defendant-Appellant.

Before: Neff, P.J., and Murphy and Marilyn Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, and felony-firearm, MCL 750.227b; MSA 28.424(2). Defendant appeals and claims that charges must be dismissed due to a violation of the statute relating to the Interstate Agreement on Detainers (IAD), MCL 780.601; MSA 4.147(1). Defendant argues that the court lacked jurisdiction to try him since trial did not commence within the 180 days as required by this statute. We agree and reverse defendant's convictions.

The record reveals that on September 7, 1988, defendant was notified of a detainer and his rights pursuant to the IAD and on the same date he made his request for disposition to the Indiana prison authorities, where he was being held. Apparently, the Indiana prison authorities did not immediately forward the disposition request to the Jackson County Prosecutor's Office, as it was not

received by that office until September 26, 1988. Trial commenced on March 22, 1989, more than 180 days after defendant served his dispositional request on the Indiana authorities.

Michigan case law is clear that the commencement of the 180-day statutory period was triggered by the defendant's request for final disposition to the prison officials in this case. *People v Malone*, 177 Mich App 393, 399; 442 NW2d 658 (1989); *People v Marshall*, 170 Mich App 269, 276-277; 428 NW2d 39 (1988). Since the charges against defendant were not brought to trial within the requisite 180 days, and noting that no exceptions to the statutory requirement are claimed, dismissal of the charges against defendant is mandated. *People v Joseph Bowman*, ___ Mich App ___; ___ NW2d ___ (Docket No. 69453, decided May 7, 1991, 9:35 a.m.).

For the forgoing reasons, defendant's convictions and sentences are vacated and the charges dismissed.

Reversed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Marilyn Kelly

Michigan Supreme Court
Lansing, Michigan 48909

Opinion

FILED JANUARY 9, 1992

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff-Appellant,

v No. 91979

WILLIAM FEX,

Defendant-Appellee.

PER CURIAM

The Court of Appeals reversed this defendant's convictions on the ground that his trial did not take place within the 180-day time limit that is found in the Interstate Agreement on Detainers. We conclude that the Court of Appeals erred in its calculation of the 180-day period. We therefore reverse the judgment of the Court of Appeals and reinstate the judgment of the circuit court.

I

In December 1987, a robbery took place at a Jackson restaurant. Following an investigation, the defendant was charged with armed robbery and possession of a firearm

during the commission of that felony.[1] MCL 750.529, 750.227b; MSA 28.797, 28.424(2).

For an unrelated conviction, the defendant was incarcerated during 1988 at the Westville Correctional Center in Indiana. On September 7, 1988, he learned that Michigan authorities had placed a detainer on him as a result of the Jackson robbery. That day, he gave the Indiana prison authorities his request for final disposition of the robbery charge.

The Indiana authorities mailed the defendant's request on September 22, 1988. It was received by the Jackson County Prosecuting Attorney on September 26, 1988.

The defendant's trial began on March 22, 1989, when a jury was selected. March 22 was 177 days after the request was received in Jackson County, 181 days after it was mailed from Indiana, and 196 days after the defendant delivered his request to the Indiana authorities.

Prior to trial, the defendant had filed a written motion for dismissal under the Interstate Agreement on Detainers (IAD). MCL 780.601 *et seq.*; MSA 4.147(1) *et seq.* In his motion, he argued that the trial would not begin until after the 180-day limitation found in Article III(a) of the IAD.

[1] The defendant was also charged with assault with intent to murder, but that count was later dismissed. MCL 750.82; MSA 28.277.

The trial court heard and denied the motion on the first day of trial. The next day, the jury found the defendant guilty of armed robbery and felony-firearm.[2]

The defendant's convictions were reversed by the Court of Appeals.[3] The prosecutor has applied for leave to appeal.

II

Article III(a) of the IAD provides that a defendant "shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint. . . ." This case squarely presents the question whether the phrase "caused to be delivered" refers to the date when the request is given to prison authorities, or the date when the request is received by officials of the state where the prosecution is pending.

The IAD is several decades old and is written in a style that permits the interpretation urged by the

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[2] The defendant was sentenced to a term of from five to twenty years in prison for armed robbery. He also received the mandatory two-year consecutive term for felony-firearm.

[3] Unpublished opinion per curiam of the Court of Appeals, decided June 21, 1991 (Docket No. 119192).

defendant.[4] However we are persuaded that the proper interpretation is that urged by the prosecutor. In Article III(b), the IAD states a prisoner's duty to give or send the request to the prison authorities who are holding him. Similar language, which would indicate that the 180-day period runs from the date the request is given or sent to prison authorities, could easily have been employed in Article III(a), if the drafters had been so inclined. Instead, the period runs from the time when the prisoner has caused *delivery*, which is actual receipt.

This interpretation is consistent with the explanation offered by the United States Supreme Court in *Carchman v Nash*, 473 US 716, 721; 105 S Ct 3401; 87 L Ed 2d 516 (1985):

> "Specifically, Art. III requires the warden to inform the prisoner that a detainer has been lodged against him and that he may request final disposition of the indictment, information, or complaint upon which the detainer is based. If the prisoner makes such a request, the warden must forward it, together with the certificate providing certain information about the prisoner's terms of confinement, to the appropriate

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[4] Article III(a) does not explicitly state that the notice must be received in order to trigger the 180-day period. Nor does it say that the prisoner must deliver his request. Instead, the statute requires the prisoner to have "caused" the delivery. Since Article III(b) specifically states that the prisoner is to give the request to the prison authorities (the prisoner is not personally to send the request to the state that seeks to prosecute), one could say that a prisoner who has fulfilled the obligation under Article III(b) has "caused" the delivery to the extent that it is within the prisoner's power to do so.

prosecuting official and court of the receiving State. The authorities in the receiving State *then* must bring the prisoner to trial within 180 days, absent good cause shown, or the court must dismiss the indictment, information, or complaint with prejudice, and the detainer will cease to be of any force or effect." (Emphasis supplied.)

A similar view is found in the report that the United States Senate Judiciary Committee presented when it recommended passage of the IAD:

> "Under the agreement, prison authorities are required to inform prisoners of all indictments, informations, or complaints on the basis of which detainers have been lodged against them by other jurisdictions. Prisoners may then request trial on such pending charges. Any request is transmitted through the warden to the proper official in the other jurisdiction who *then* has 180 days to bring the prisoner to trial." Senate Report No. 91-1356, 91st Congress, 2d Session, 3 US Code Cong & Admin News, 4864, 4865 (1970). (Emphasis supplied).

The rule requiring actual receipt of the prisoner's request has been adopted in the overwhelming majority of jurisdictions that have considered this question.[5] A typical discussion is found in *State v Moore*, 774 SW2d 590, 595 (Tenn, 1989), where the Tennessee Supreme Court explained:

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[5] An obvious purpose of an interstate agreement is to achieve a uniform body of law in the jurisdictions that have enacted the agreement. Absent sound reasons to the contrary, it is therefore sensible to interpret such an agreement in the same manner as a majority of other jurisdictions.

"In our opinion the receiving state cannot be charged with attempting to try the prisoner within 180 days until the receiving state has been given notice, by the prisoner or by officials of the sending state, of a request to proceed under Article III. Once that burden has been satisfied by the prisoner, the receiving state must, of course, comply with the terms of the Compact. There is a division of authority on this point. A few states have calculated the time from the date of the signing of the request for disposition, Form II, regardless of whether the receiving state receives the request or not. *See, e.g., McCallum v State*, 407 So 2d 865 (Ala Crim App, 1981), *People v Daily*, 46 Ill App 3d 195; 4 Ill Dec 756; 360 NE2d 1131 (1977), *Commonwealth v Martens*, 398 Mass 674; 500 NE2d 282 (1986), cert den 481 US 1041; 107 S Ct 1982; 95 L Ed 2d 821 (1987), *State v Wells*, 186 NJ Super 497; 453 A2d 236 (1982), and *People v [Pellegrino]*, 131 Misc 2d 118; 499 NYS2d 841 (1986).

"By far a greater number of cases, however, have reached the opposite conclusion, holding that the prosecutor or court in the receiving state cannot reasonably be expected to proceed until receipt of notice of the prisoner's request. *See, e.g., Young v Mabry*, 471 F Supp 553 (ED Ark, 1978), aff'd 596 F2d 339 (CA 8 [1979]), cert den 444 US 853; 100 S Ct 107; 62 L Ed 2d 69 (1979); *Beebe v Vaughn*, 430 F Supp 1220 (D Del, 1977); *Spears v State*, 280 Ark 577; 660 SW2d 913 (1983); *People v Bielecki*, 41 Colo App 256; 588 P2d 377 (1978); *State v Braswell*, 194 Conn 297; 481 A2d 413 (1984), cert den sub nom *Braswell v Connecticut*, 469 US 1112; 105 S Ct 793; 83 L Ed 2d 786 (1985); *State v Minnick*, 413 So 2d 168 (Fla App, 1982); *Pinnock v State*, 384 So 2d 738 (Fla App,

1980); *Thompson v State*, 186 Ga App 379; 367 SE2d 247 (1988); *Scrivener v State*, 441 NE2d 954 (Ind, 1982); *Holland v State*, 265 Ind 216; 352 NE2d 752 (1976); *Sweat v Darr*, 235 Kan 570; 684 P2d 347 (1984); *State v White*, 234 Kan 340; 673 P2d 1106 (1983); *Hines v State*, 58 Md App 637; 473 A2d 1335 (1984); *State v Walton*, 734 SW2d 502 (Mo [*en banc*], 1987); *State v McGann,*, 126 NH 316; 493 A2d 452 (1985); *State v Ternaku*, 156 NJ Super 30; 383 A2d 437 (1978); *State v Reitz*, 26 Ohio App 3d 1; 498 NE2d 163 (1984); *Commonwealth v Fisher*,451 Pa 102; 301 A2d 605 (1973); *State v Moosey*, 504 A2d 1001 (RI, 1986). *See generally* anno: 98 ALR[3d] 160, § [16][a] . . . .

> "In these cases it has been noted that it would be contrary to the public interest to start the 180 day period before actual receipt by the prosecutor of the prisoner's request and that this could not have been the legislative intent in enacting the Compact. Article III requires that the receiving state proceed after the prisoner '*shall have caused to be delivered* to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of his imprisonment and his request for final disposition' of the charges pending there. (Emphasis added)."

In the present case, the Court of Appeals cited three prior decisions for the rule that the 180-day statutory period is triggered when a defendant provides a request for final disposition to prison authorities. *People v Marshall*, 170 Mich App 269, 277; 428 NW2d 39 (1988); *People v Malone*, 177 Mich App 393, 398-399; 442 NW2d 658 (1989); *People v Bowman*, 189 Mich App 215, 218-219; 472 NW2d

645 (1991). However, an examination of these authorities demonstrates that they are of limited applicability.

In *Marshall*, a prisoner's initial request for final disposition was never delivered by prison authorities. Similarly, Bowman involved a complete failure to forward a prisoner's request.[6] The statement in Malone was dictum.[7]

In light of all these considerations, we are persuaded that the majority rule should be adopted in Michigan. We thus conclude that the Court of Appeals erred when it found that the defendant was not tried within the 180-day period stated in Article III(a) of the IAD.[8] We therefore reverse the judgment of the Court of Appeals and

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[6] Since Article III(b) states that prison authorities "shall promptly forward" a prisoner's request, we reserve the question how the IAD should be applied in a case where the request is never forwarded or where there is a very substantial delay in delivering the defendant's request.

[7] Under the analysis applied by the Court of Appeals in *Malone*, the defendant was timely tried without regard to whether the 180-day period was triggered by the defendant giving notice to prison authorities or by actual receipt in the state where the prosecution was pending.

[8] We have considered the defendant's other arguments, and are not persuaded that relief should be granted on those claims.

reinstate the judgment of the circuit court.[9] MCR 7.302 (F) (1).

/s/ James H. Brickley
/s/ Patricia J. Boyle
/s/ Robert Griffin
/s/ Conrad J. Mallett, Jr.
/s/ Dorothy Comstock Riley

STATE OF MICHIGAN

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v No. 91979

WILLIAM FEX,

Defendant-Appellant.

BEFORE THE ENTIRE BENCH

LEVIN, J. (*dissenting*).

I adhere to the view that peremptory reversal should be reserved for cases in which the law is settled and no

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[9] The defendant's motion for bond pending appeal is therefore denied as moot.

factual assessment is required.[1] In the instant case, as indicated in the majority opinion, a legal assessment is required. Peremptory disposition is not appropriate.

The meaning of the phrase, "within one hundred and eighty days after [the prisoner] shall have caused to be delivered" to the prosecutor and the court, written notice and request for formal disposition (Interstate Agreement

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[1] *Roek v Chippewa Valley Bd of Ed*, 430 Mich 314, 322; 422 NW2d 680 (1988) (Levin, J., separate opinion); *Grames v Amerisure Ins Co*, 434 Mich 867, 868-875 (1990) (Levin, J., dissenting); *People v Little*, 434 Mich 752, 769-770; 456 NW2d 237 (Levin, J., dissenting); *People v Wrenn* 434 Mich 885, 885-886 (1990) (Levin, J., dissenting); *Harkins v Northwest Activity Ctr, Inc*, 434 Mich 896, 899 (1990) (Levin, J., dissenting); *Dep't of Social Services v American Commercial Liability Ins Co*, 435 Mich 508, 515; 460 NW2d 194 (1990) (Levin, J., separate opinion); *Yahr v Garcia*, 436 Mich 872 (1990) (Levin, J., dissenting); *Universal Underwriters Ins Co v Vallejo*, 436 Mich 872, 873-874 (1990) (Levin, dissenting); *People v Stephens*, 437 Mich 901, 901-908 (1991) (Levin, J., dissenting); *People v Berkey*, 437 Mich 40, 54; 467 NW2d 6 (1991) (Levin, J., dissenting); *Turner v Washtenaw Co Road Comm*, 437 Mich 35, 38-39; 467 NW2d 4 (1991) (Levin, J., separate opinion); *Lepior v Venice FWP*, 437 Mich 951, 952962 (1991) (Levin, J., dissenting).

See *Schweiker v Hansen*, 450 US 785, 791; 101 S Ct 1468; 67 L Ed 2d 685 (1981) (Marshall, J., dissenting) ("A summary reversal is a rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error"); *Leis v Flynt*, 439 US 438, 457-458; 99 S Ct 698; 58 L Ed 2d 717 (1979) (Stevens, J., dissenting) ("Summary reversal 'should be reserved for palpably clear cases of . . . error.' *Eaton v Tulsa*, 415 US 697, 707 [94 S Ct 1228; 39 L Ed 2d 693 (1974)] [Rehnquist, J., dissenting]").

on Detainers, MCL 780.601; MSA 4.147[1]), is not so free from doubt that peremptory disposition is appropriate.

The paraphrase of the quoted words by the United States Supreme Court, set forth in the majority opinion, who then has 180 days to bring the prisoner to trial,[2] does not indicate whether the 180 days begin to run when notice is given or sent by the prisoner, or, rather, when notice is received by the prosecutor and court. The integrity of, and judicial reliance on, congressional committee reports, has been questioned.[3] The weight of authority is surely worthy of consideration, but has not been thought to be controlling, or a sufficient reason, in itself, for decision.

/s/ Charles L. Levin

/s/ Michael F. Cavanagh

---

[2] Slip op, p 4.

[3] "[W]e are a Government of laws not of committee reports." *Wisconsin Public Intervenor v Mortier*, 501 US ___; 111 S Ct 2476; 115 L Ed 2d 532, 553 (1991) (Scalia, J., concurring).

Supreme Court of the United States

No. 91-7873

William Fex,

Petitioner

v.

Michigan

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Michigan.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the Petition for writ of certiorari, it is ordered by this court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

May 18, 1992

Supreme Court, U.S.
FILED
JUL 23 1992
JUL 27 1992
OFFICE OF THE CLERK
OFFICE OF THE CLERK

No. 91-7873

In The

Supreme Court of the United States

October Term, 1992

WILLIAM FEX,

Petitioner,

v.

MICHIGAN,

Respondent.

On Writ of Certiorari
To The Supreme Court Of Michigan

BRIEF OF PETITIONER

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QUESTIONS PRESENTED

I

SHOULD THE DECISION OF THE MICHIGAN SUPREME COURT THAT THE 180-DAY TIME LIMIT UNDER ARTICLE III OF THE INTERSTATE AGREEMENT ON DETAINERS DOES NOT COMMENCE WHEN THE DEFENDANT SUBMITS THE REQUEST FOR FINAL DISPOSITION TO THE PRISON AUTHORITIES IN THE SENDING STATE BE REVERSED BECAUSE IT IS IN ERROR AND CONFLICTS WITH DECISIONS OF OTHER COURTS?

II

DID THE MICHIGAN SUPREME COURT ERR IN THAT IT NEITHER HELD THAT THE 180-DAY PERIOD IN WHICH A DEFENDANT MUST BE BROUGHT TO TRIAL UNDER THE IAD BEGAN BEFORE THE PETITIONER WAS NOTIFIED OF A DETAINER BECAUSE HE WAS IMPRISONED FOR SEVERAL MONTHS WHILE THERE WAS A PENDING ARREST WARRANT OF WHICH THE PRISON AUTHORITIES HAD KNOWLEDGE NOR REMANDED THE CASE FOR A HEARING TO DETERMINE WHETHER ANY DELAY WAS REASONABLE?

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DECISIONS BELOW

The Petitioner was convicted in the Jackson Circuit Court, in No. 88 49555 FC. Judgment was entered on March 23, 1989. This judgment was not reported. The judgment was reversed by the Michigan Court of Appeals in an unreported decision. *People v. William Fex*, No. 119192 (Mich. App. 1991); Jt. App. at 38.

The Supreme Court reversed. *People v. William Fex*, 439 Mich. 117, 479 N.W.2d 625 (1992); Jt. App. at 40. The Petitioner is asking for a reversal of the decision of the Michigan Supreme Court.

JURISDICTION

This case is before the Court on certiorari granted with regard to a decision of the Michigan Supreme Court. The Michigan Supreme Court interprets the Interstate Agreement on Detainers, MICH. COMP. LAWS ANN. § 780.601, MICH. STAT. ANN. § 4.147(1), in conflict with the interpretation of other state courts of last resort of state enactments of the Interstate Agreement on Detainers and with the interpretation of courts of the United States of the federal enactment, 28 U.S.C.A. App. § 2. This petition follows the People's appeal by leave from reversal of a conviction of Armed Robbery, MICH. COMP. LAWS ANN. § 750.529, MICH. STAT. ANN. § 28.797 and Felony Firearm, MICH. COMP. LAWS ANN. § 750.227b, MICH. STAT. ANN. § 28.424(2). (Judgment and Probation/Commitment Order, April 20, 1989).

Petitioner was convicted in the Jackson Circuit Court on March 23, 1989. *Id.* Sentence was imposed on April 20, 1989. *Id.* The Defendant-Appellant requested appointment of counsel within 56 days on June 9, 1989. Counsel was appointed on June 12, 1989. A timely claim of appeal was filed within 56 days of the appointment of appellate counsel after a timely MOTION TO APPOINT APPELLATE COUNSEL on June 5, 1989. (Claim of Appeal).

The Michigan Court of Appeals reversed the conviction. *PEOPLE OF THE STATE OF MICHIGAN v. WILLIAM FEX*, No. 119192 (Mich. App. June 21, 1991). Leave to appeal the decision was requested of the Michigan Supreme Court within 21 days. Without granting leave to appeal, the Michigan Supreme Court reversed the Court of Appeals decision. *PEOPLE OF THE STATE OF MICHIGAN v. WILLIAM FEX*, No. 91979 (January 9, 1992). A petition for certiorari was filed April 7, 1992, within 90 days of the decision of the Michigan Supreme Court. Petitioner seeks review under jurisdiction of 28 U.S.C.A. § 1257(a).

STATUTES CONSTRUED

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial

within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided*, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request

for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

* * *

Interstate Agreement on Detainers, Art. III, 18 U.S.C.A. App. § 2.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

Interstate Agreement on Detainers, Art. VI, 18 U.S.C.A. App. § 2.

STATEMENT OF FACTS

This matter was occasioned by the armed robbery of a Rax drive-in restaurant on December 8, 1987. Tr. at 48 (March 23, 1989). No one was arrested, but a complaint was issued against the Petitioner. Complaint, Jt. App. at 2 (February 29, 1988). The complaint fully identified the Petitioner, showing that he was in custody in Fort Wayne, Indiana. The Petitioner was then awaiting disposition of two robbery charges in Indiana. Presentence Report at 5 (April 7, 1989).

According to the presentence report, the Petitioner was sentenced to prison in Indiana on May 24, 1988, although counsel urged at trial that the date was April 23, 1988. Tr. at 3. In either case, the Petitioner has not been able to establish that there was any activity in Michigan or Indiana with regard to the Michigan case until September 7, 1988. On that date, the Petitioner was served with a NOTICE OF UNTRIED INDICTMENT, INFORMATION

OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION under the Interstate Agreement on Detainers, with accompanying forms, by Indiana prison authorities. *See* Jt. App. at 5-16. He immediately signed the forms and returned them to the prison officials.

It is not clear what happened next, but copies of two envelopes are in the court file. One, dated September 9, 1988, apparently contained an OFFER TO DELIVER TEMPORARY CUSTODY bearing that date, addressed to the Jackson County Prosecutor. Jt. App. at 17. According to the prosecutor, the other envelope, dated Thursday, September 22, 1988, contained the INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS (REQUEST FOR DISPOSITION) dated September 7, 1988. The prosecutor asserts that this envelope was received on Monday, September 26, 1988. The Petitioner's jury trial started on March 22, 1989.

The Defendant moved, unsuccessfully, for dismissal because he was not tried within 180 days of his REQUEST FOR DISPOSITION under the Interstate Agreement on Detainers (IAD), MICH. COMP. LAWS ANN. § 780.601, MICH. STAT. ANN. § 4.147(1). The court of appeals reversed. *People v. William Fex*, No. 119192 (Mich. App. June 21, 1991). The People's application for leave to appeal ensued.

The Michigan Supreme Court held that the decision of the court of appeals was erroneous because the 180-day period should have started on September 26, 1988, when the prosecutor received the REQUEST FOR DISPOSITION, not from September 7, 1988, when it was given to prison authorities. Defendant-Appellee responds that

the decision of the court of appeals was correct for the reasons stated in the unanimous per curiam decision.

SUMMARY OF ARGUMENT

This is a federal question on certiorari from the Michigan Supreme Court. The Petitioner was convicted of Armed Robbery, MICH. COMP. LAWS ANN. § 750.529, M.S.A § 28.797 and Felony Firearm, MICH. COMP. LAWS ANN. § 750.227b, MICH. STAT. ANN. § 28.424(2), by a jury in the Jackson County Circuit Court. (Judgment and Probation/Commitment Order, April 20, 1992).

The Michigan Court of Appeals reversed the conviction, holding that the 180-day period in which the state must bring a defendant to trial under the Interstate Agreement on Detainers (IAD), Art. III(a), 18 U.S.C.A. App. § 2, commences when prisoner tenders a REQUEST FOR DISPOSITION under that act to prison authorities in the sending state. *People v. William Fex*, No. 119192 (June 21, 1991). The IAD concerns the disposition of detainers pending against defendants who are incarcerated under sentence in other states, and the transfer of such defendants to a state in which a detainer is pending.

The Michigan Supreme Court reversed the Court of Appeals, holding that the 180-day period does not commence until the REQUEST FOR DISPOSITION is received by the prosecutor in the receiving state. *People of the State of Michigan v. William Fex*, 439 Mich. 117, 479 N.W.2d 625 (1992). Petitioner seeks review of that decision under jurisdiction of 28 U.S.C.A. § 1257.

A prisoner need only convey the written notice and REQUEST FOR DISPOSITION to appropriate prison officials to fulfill the requirements of the IAD. For this reason service is complete when the prisoner tenders the REQUEST FOR DISPOSITION to his warden's representative and the 180-day period under the IAD should begin to run. It is the Respondent's contention that the period does not run until the request is received by the Prosecutor in the receiving state. Petitioner urges that the period should begin when the prisoner tenders the request to prison authorities in the sending state. There are decisions supporting both sides, but the Petitioner believes its position represents both the majority and the correct view.

Calculating the 180-day period from the date the defendant tenders the request to prison authorities prevents sending state officials from diluting or vitiating the inmate's right to speedy trial once invoked. Fairness requires the burden of compliance with the requirements of the IAD to be placed entirely on the law enforcement officials involved, since the prisoner has little ability to enforce compliance. The interpretation urged by the Petitioner, and adopted by numerous courts, would not impede the orderly administration of justice. The prosecutor would lose no more than the few days it takes for mail to be delivered. Where there is a lengthy delay in delivery, or where the REQUEST FOR DISPOSITION is lost in the mail, the IAD permits the prosecutor to request a continuance. The prosecutor should experience little difficulty in showing the date on which the request was mailed and the date on which it was received, or that it was never received. The defendant would not be forced

to prove that an unexplained delay was occasioned by prison authorities when all of the evidence in question is in the hands of an adversary. If the court rules in Respondent's favor, there would be little incentive for officials in either sending or receiving states to transmit a REQUEST FOR DISPOSITION promptly.

The Petitioner further urges that the 180-day deadline should have been calculated from the date he was sentenced, not the date he was informed of his rights. He was not informed of his rights under the IAD until several months after he had been sentenced while there was a pending detainer from another state. The IAD provisions are triggered when a "detainer" is filed with the custodial state by the state having untried pending charges. A detainer is a "notification filed with the institution where a prisoner is serving a sentence advising him that he is wanted to face pending criminal charges in the notifying state."

According to the IAD, once the detainer was placed on the Defendant, the Indiana prison authorities were obligated to inform the Defendant of his right to final disposition without delay. A prisoner should not be penalized if the prison officials fail to carry out their duties under the IAD. The burden of the violation by the officials in the sister state should fall on the shoulders of the prosecutor. Therefore, the delay must be attributed to the prosecution. Since the Defendant was not promptly advised of his rights under the IAD, he was denied equal protection under the law. The 180-day limit should have started to run from the date of the Defendant's sentencing. The Michigan Supreme Court's decision that the 180

days does not begin until September 26, 1988 was in error.

ARGUMENT

I

THE DECISION OF THE MICHIGAN SUPREME COURT THAT THE 180-DAY TIME LIMIT UNDER ARTICLE III OF THE INTERSTATE AGREEMENT ON DETAINERS DOES NOT COMMENCE WHEN THE DEFENDANT SUBMITS THE REQUEST FOR FINAL DISPOSITION TO THE PRISON AUTHORITIES IN THE SENDING STATE CONFLICTS WITH DECISIONS OF OTHER COURTS AND SHOULD BE REVERSED.

A Defendant must be brought to trial, or proceedings initiated, within 180 days on any untried indictment, information or complaint which is the basis for the detainer lodged against him. Interstate Agreement on Detainers (IAD), Art. III(a), 18 U.S.C.A. App. § 2. A prisoner need only convey the written notice and REQUEST FOR DISPOSITION to the appropriate prison officials to completely fulfill the requirements set forth under the IAD. For this reason service is complete when the prisoner tenders the request for disposition to his warden's representative and the 180-day period under the IAD should begin to run. It is the Respondent's contention that the period does not run until the request is received by the prosecutor in the receiving state. Petitioner urges that the period should begin when the prisoner tenders the request to prison authorities in the

sending state. There is a clear split of authority on this point. According to the Respondent, the ruling of the Michigan Supreme Court agrees with the majority view. Careful analysis reveals that the Respondent is mistaken. For ease of analysis, the relevant cases are grouped by type.

A. CASES ON WHICH PETITIONER RELIES

A 1986 Massachusetts Supreme Court decision is the clearest expression of this interpretation of the IAD. *Commonwealth v. Martens*, 500 N.E.2d 282 (Mass. 1986). The court held that the 180-day period begins when a Defendant files his request for final disposition with the correctional authorities, not when those authorities forward the request to the receiving State. A prisoner need only transmit the written notice and request for disposition to the appropriate custodial officials and he has fulfilled his responsibility. Should the custodial state refuse or fail to forward the request to the receiving state, the receiving state, not the prisoner, is bound by that failure. *Id.* at 284.

Numerous other courts have held similarly. *Burns v. State*, 578 S.W.2d 650 (Tenn.Crim.App. 1978) (Failure of prison officials to notify the authorities in receiving state cannot be attributed to the Defendant); *Pittman v. State*, 301 A.2d 509 (Del. 1973) (prisoner has no supervisory power and prison official has no discretion not to transmit the REQUEST FOR DISPOSITION immediately); *Rockmore v. State*, 21 Ariz.App. 388, 519 P.2d 877 (1974) (release for failure to prosecute within 180 days could not be denied because officials of state sending the petition failed to send appropriate certificate); *Ward v. State*, 435

N.E.2d 578 (Ind. Ct. App. 1982) (request for speedy trial given to prison case manager was suitable written notice and request as required by IAD and triggered 180-day time period); *Gibson v. Klevenhagen,* 777 F.2d 1056 (5th Cir. 1985) (where prisoner sent repeated IAD requests to prosecutor in receiving state, IAD notice requirements are satisfied); *People v. Masselli,* 234 N.Y.S.2d 929, 12 App. Div.2d 366 (1962) (requirement of notice and request for final disposition was satisfied when forms were served on chief clerk of the prison); *State v. Ferguson,* 41 Ohio App.3d 306, 535 N.E.2d 708 (1987) (sending state official's failure to send the certificate of inmate status should not vitiate inmate's right to speedy trial once invoked); *State v. Lippolis,* 101 N.J. Super. 435, 244 A.2d 531 (1968) (burden of compliance with the requirement of the IAD is placed entirely on the law enforcement officials involved); *State v. Tarango,* 105 N.M. 592, 734 P.2d 1275 (N.M. Ct. App. 1987) (prisoner need only serve written notice and REQUEST FOR DISPOSITION on corrections officials of sending state; prisoner may serve prosecutor in receiving state directly, but bears burden of serving a notice which conforms to technical requirements of IAD when she does so); *United States v. Hutchins,* 489 F.Supp. 710 (N.D.Ind. 1980) (U.S. Marshall stepped into jail commander's shoes for purposes of accepting the Defendant's IAD request; government cannot claim that mistakes of its agents voided Defendant's rights under IAD); *United States v. Reed,* 910 F.2d 621 (9th Cir. 1990) (deputy notified defendant of detainer, but improperly filled out form causing delay in notice to prosecutor).

B. OUTSTANDING DETAINERS FROM MULTIPLE JURISDICTIONS

In two cases the authorities in the sending state delayed transmitting the REQUEST FOR DISPOSITION while action was being taken on outstanding detainers from other states. These cases hold that the 180-day period commences on receipt of the REQUEST FOR DISPOSITION by the prosecutor in the receiving state, but are cases in which there are outstanding detainers placed by two or more states. *State v. Moore,* 774 S.W.2d 590 (Tenn. 1989) (time period did not begin to run until the receiving state was given notice despite fact that sending state held REQUEST FOR DISPOSITION for 225 days while defendant was in custody of sending state); *State v. Walton,* 734 S.W.2d 502 (Mo. 1987). Art. III(a) only provides for continuance granted by the court on good cause, not unilateral delay by prison authorities. IAD, Art. III(a), 18 U.S.C.A. App § 2. The IAD directs prison officials to notify all appropriate prosecutors and courts "forthwith." IAD, Art. III(d), 18 U.S.C.A. App. § 2. To allow prison officials to ignore the obligation to transmit the REQUEST FOR DISPOSITION immediately is contrary to the express provisions of the statute. On the other hand, the IAD does not provide direction in dealing with detainers from multiple jurisdictions. This is a special circumstance on which the lower courts should have guidance, but permitting the prison officials of the sending state to forward the documents at their own discretion is clearly contrary to the letter and the intent of the IAD.

C. PRISONER SENDING REQUEST FOR DISPOSITION DIRECTLY TO PROSECUTOR

Several cases concerned attempts by prisoners to invoke the protection of the IAD by communicating directly with the prosecutor or court in the receiving state. In one case, the federal district court in Delaware held that the defendant was subject to more strict technical requirements because he attempted to serve the court in the receiving state instead of tendering them to the corrections officials in the sending state. *Beebe v. Vaughn*, 430 F.Supp. 1220 (D. Del. 1977). The Ohio Court of Appeals held that the 180-day period did not begin to run because the defendant's REQUEST FOR DISPOSITION, mailed directly to the prosecutor, was not accompanied by a certificate of inmate status. *State v. Reitz*, 26 Ohio App.3d 1, 498 N.E.2d 163 (1984).

The IAD does not provide for submission of the REQUEST FOR DISPOSITION by the prisoner to the prosecutor. Despite this, it is reasonable for the court to interpret the IAD to permit the prisoner to circumvent a possibly hostile prison administration. When the prisoner undertakes to bypass the procedure provided in Art. III(b), she assumes the burden of conveying notice to the prosecutor, including technical requirements normally the responsibility of the officials in the sending state. *McCallum v. State*, 407 S.2d 865 (Ala. Cr. App. 1981). Requiring strict adherence to the technicalities of the IAD by the "self-help" prisoner reduces the likelihood that the prisoner will use the statute offensively to frustrate the ends of justice. *People v. Daily*, 46 Ill. App.3d 195, 205, 360 N.E.2d 1131, 1137 (1977). The certificate of inmate status

described in Art. III(a) is an important part of the notice. It informs the prosecutor of the inmate's circumstances permitting the prosecutor to make an informed decision regarding disposition of the case. *Id.* at 206, 360 N.E.2d at 1138; *see also Beebe v. Vaughn*, 430 F.Supp. at 1221 (defendant sent papers which were not IAD forms to nonexistent official); *People v. Wilson*, 69 Cal. App.3d 631, 138 Cal. Rptr. 259 (1977) (prisoner's informal request did not trigger 180-day time limit because essential information was missing); *Holland v. State*, 352 N.E.2d 752 (Ind. 1976) (defendant caused letter to be sent to Indiana prosecutor requesting a trial, presumably not IAD form).

Holland is anomalous because the trial started on February 23, 1975, a Sunday. This was only the 181st day after the prisoner *mailed* the request. *Id.* at 757. If that is true, Saturday, February 22, 1975 would not have counted and the trial was properly brought within the time limit counting from the mailing date, August 26, 1974.

The Colorado Court of Appeals stated that the period started on the latest date that either the prosecutor or the court is served with the prisoner's self-help IAD papers. *People v. Bielicki*, 588 P.2d 377 (Colo. App. 1978). Where the IAD request was received by the prosecutor on July 30, but the prosecutor did not file a copy with the district court until August 3, the 180-day time period began on August 3. *Id.* at 378. This is anomalous because no other court has ever imposed such a requirement. It is also ironic because the prosecutor's office itself caused the delay.

In several cases court have held that the IAD was never properly invoked because the prisoner's REQUEST FOR DISPOSITION was deficient. *McCallum v. State*, 407

So.2d at 869; *People v. Daily*, 46 Ill. App. 3d 195, 360 N.E.2d 1131 (1977) (courts do not require strict compliance with the agreement by a prisoner, but require a good faith, diligent effort to invoke the statute); *Hines v. State*, 58 Md.App. 637, 473 A.2d 1335 (1984) (no IAD violation because notice sent by defendant to prosecutor did not conform to requirements of IAD); *State v. Thompson*, 186 Ga. App. 379, 367 S.E.2d 247 (1988) (period did not begin to run until prosecutor received warden's certificate of inmate status).

The supreme court of Rhode Island held that a defendant was not entitled to dismissal under the IAD where the prosecutor never received the REQUEST FOR DISPOSITION. *State v. Dufault*, 540 A.2d 355, 356 (R.I. 1988). This would be easy to dismiss as a case where the defendant was attempting to bypass the prison officials in the sending state and the notice requirement was not met. The analysis is problematic because the court relates that the defendant attached an affidavit from a prison official in the sending state that indicated that the defendant mailed the notice when he said he did. The court does not discuss this aspect.

There is another difficulty with *Dufault*. Dufault filed a motion to dismiss on IAD grounds on June 19, 1985. *Id.* at 355. An affidavit alleging the mailing of a REQUEST FOR DISPOSITION in September 1984 was attached to the motion. On December 11, 1985, he filed a second motion to dismiss. *Id.* at 356. This was 175 days after the June 19, 1985 motion was filed. If the prosecutor did not receive actual notice when the REQUEST FOR DISPOSITION was mailed, he was certainly put on notice when the first motion was filed. There is no indication that the

state was prepared to try the case within five days of December 11. The court decided that the Rhode Island legislature did not intend that prisoners should have their cases dismissed "because their request and notice was either lost or delayed in the mail." *Id.* at 356. The court sidestepped the crucial issue of actual notice and ignored the clear intent of the legislature to provide dismissal as a means of enforcing the deadlines provided in the IAD. The dismissal sanction was adopted as essential to guarantee compliance with the statutory mandate, not to protect the Defendant from being prejudiced. *Nelms v. State*, 532 S.W.2d 923 (Tenn. 1976).

Because the inmate is assuming the responsibility of providing the notice to the prosecutor, it is reasonable to start the clock only when the prosecutor receives the notice and only if it meets the minimum requirement of providing the basic information needed by the prosecutor. In this case, the Petitioner tendered the REQUEST FOR DISPOSITION to the prison administration. It is unreasonable to delay the start of the 180-day period until the prosecutor actually receives the notice when the burden is on officials in the sending state to transmit it. More importantly, prisoner self-help cases in which the court holds that the request is only effective on receipt by the prosecutor should not be considered as supporting the proposition urged by the Respondent.

D. CASES ON WHICH RESPONDENT RELIES

There is a core of cases that hold that the 180-day time limit is measured from the date the prosecutor receives the REQUEST FOR DISPOSITION from the

authorities in the sending state, not the date that the prisoner tenders it to them.

In one Kansas Supreme Court case, the REQUEST FOR DISPOSITION was received four days after the inmate mailed it. *State v. White*, 234 Kan. 340, 673 P.2d 1106 (1983). He was tried 182 days after the request was received by the court clerk. The 180th day fell on Saturday. The trial was 186 days after the defendant tendered the request to prison authorities. The court held that the trial was within the time limit. *Id.* at 347, 673 P.2d at 1111.

In a New Jersey case, the REQUEST FOR DISPOSITION was mailed the day after the prisoner tendered it to prison authorities and the date of receipt by the prosecutor was five days later. *State v. Ternaku*, 156 N.J. Super. 30, 32, 383 A.2d 437, 438 (1978). The defendant was at first represented by appointed counsel, but retained an attorney related to the trial judge by marriage. The trial judge recused himself and the case was sent to a judge in another county. The defendant moved to dismiss the case 186 days after he tendered the REQUEST FOR DISPOSITION to the prison authorities, but only 180 days after it was received by the prosecutor. *Id.* at 32, 383 A.2d at 438. The court found that the latter date was controlling. The court could as easily have determined that there was a period of excludable delay due to the action of the defendant.

White and *Ternaku* are the only cases in which the prisoner tendered the REQUEST FOR DISPOSITION to prison authorities and the delay was the normal mail delivery period. The other cases involved significant

periods of unexplained procrastination by the sending state authorities, as does this case.

In one case, sending state authorities delayed for two months. *People v. Wilson*, 69 Cal. App.3d 631, 138 Cal. Rptr. 259 (1977). During that time, the defendant attempted to serve the prosecutor directly. *Id.* at 634, 138 Cal.Rptr. 260. The court held that the prisoner's self-help was ineffectual, but remanded the case for a hearing to determine the reasonableness of the delay. This case flatly contradicts the requirement of Art. III(d) that the official of the sending state transmit the REQUEST FOR DISPOSITION "forthwith." IAD, Art. III(d), 18 U.S.C.A. App. § 2.

The U.S. Seventh Circuit Court was confronted with a case in which there were numerous periods of excludable delay. *United States v. Nesbitt*, 852 F.2d 1502 (7th Cir. 1988). The court of appeals counted the 180-day time period from the date that the U.S. Attorney received the defendant's REQUEST FOR DISPOSITION, rather than the date the defendant tendered it to the prison officials. *Id.* at 1516. However, this was merely dictum. The trial was within 180 days of either date, after subtracting excludable delays.

A case which closely parallels the present circumstances was decided by the Connecticut Supreme Court. *State v. Braswell*, 194 Conn. 297, 481 A.2d 413 (1984). The court held that the 180-day limit was not violated when the defendant's trial commenced 164 days after the prosecutor in the receiving state received the request, despite the fact that 189 days had passed since the forms had been given to prison authorities in the sending state. *Id.*

at 300, 481 A.2d at 418. The court recognized that the prison authorities are the agents of the prosecutor in the receiving state. *Id.* at 299, 481 A.2d at 418. Thus, the conclusion that the defendant should bear the burden of the delay in transmitting the REQUEST FOR DISPOSITION is indefensible.

As here, much of the 25-day delay in *Braswell* must be attributed to failure of the prison authorities to mail the REQUEST FOR DISPOSITION. It was sent certified mail, but the postmark was illegible. A postal superintendent testified that the envelope bore evidence of misdirection, but this only accounted for four to six days of delay. *Id.* at 301, 481 A.2d at 416. It is extremely hard to believe that the prison mailroom would not have a record of sending the certified envelope.

The Exclusionary Rule is not intended to impede the prosecution of the guilty, although that is a secondary effect. The protection of the innocent from unreasonable police intrusion and the preservation of the integrity of the criminal justice system are so important that the injustice of the secondary effect must be tolerated. Similarly, the rule requiring dismissal for failure to adhere to the 180-day deadline is not intended to let miscreants off, but to enforce prompt prosecution. The interpretation urged by the Respondent would frustrate the higher purpose. If the Court adopts the Respondent's position there would be neither a legal nor a practical limit on the length of time prison authorities could delay forwarding a REQUEST FOR DISPOSITION under the IAD.

The interpretation urged by the Petitioner, and adopted by numerous courts, would not impede the

orderly administration of justice. The prosecutor would lose no more than the few days it takes for mail to be delivered. Where there is a lengthy delay in delivery, or where the REQUEST FOR DISPOSITION is lost in the mail, Art. III(a) permits the prosecutor to request a continuance. IAD, Art. III(a), 18 U.S.C.A. App. § 2. The prosecutor should experience little difficulty in showing the date on which the request was mailed and the date on which it was received, or that it was never received. The defendant would not be forced to prove that an unexplained delay was occasioned by prison authorities when all of the evidence in question is in the hands of an adversary.

The Court is not bound by the decisions of the lower courts, but the Petitioner urges the Court not to overrule the clear weight of authority supporting the Petitioner's position. The Petitioner urges this court to adopt the rule stated by Judge Milonas of the New York County Supreme Court in 1978. He stated, "Other than providing prison officials with the required notice, which the defendant must undertake to do, the duty of carrying out the statutory provisions belongs entirely to the authorities involved." *People v. Diaz*, 94 Misc.2d 1010, 1012, 406 N.Y.S.2d 239, 241 (1978).

While the IAD is not intended to prevent the just prosecution of a miscreant, the negative effect of delays on rehabilitation is an important social concern. The legislature reports clearly show this concern. They state, in part, as follows:

> The Attorney General has advised the committee that a prisoner who has had a detainer lodged against him is seriously disadvantaged

by such action. He is in custody and therefore in no position to seek witnesses or to preserve his defense. He must often be kept in close custody and is ineligible for desirable work assignments. What is more, when detainers are filed against a prisoner he sometimes loses interest in institutional opportunities because he must serve his sentence without knowing what additional sentences may lie before him, or when, if ever, he will be in a position to employ the education and skills he may be developing. Although a majority of detainers filed by States are withdrawn near the conclusion of the Federal sentence, the damage to the rehabilitation program has been done because the institution staff has not had sufficient time to develop a sound prerelease program.

S.Rep.No. 1356, 91st Cong., 2d Sess. 3, H.R.Rep.No. 1018, 91st Cong., 2d Sess. 3 (1970), 1970 U.S.CODE CONG. & ADMIN. NEWS 4864, 4866.

Philip Brasfield had some pithy comments on the conditions of those in prison. He stated as follows:

> Prisons hurt, maim, and kill. Prisons demoralize and feed the self-hatred generated by failed human potential. To be a person caged, shackled, and bound is a humiliation which makes one feel subhuman. The slow and methodical rape of the spirit continues day after day: men and women inside our prisons are convinced that they have no worth, no purpose, no hope, no rights, no change. For too many, that terrible lie becomes truth, a prophesy fulfilled in a thousand ways each day and night.

Philip Brasfield, *The Other Side*, May/June 1990. Notwithstanding reputed "country club" prisons, the living conditions of nearly all prisoners are dire, if not desperate. It is not necessary to aggravate these conditions by allowing detainers to lie fallow.

II

THE MICHIGAN SUPREME COURT ERRED IN THAT IT NEITHER HELD THAT THE 180-DAY PERIOD IN WHICH A DEFENDANT MUST BE BROUGHT TO TRIAL UNDER THE IAD BEGAN BEFORE THE PETITIONER WAS NOTIFIED OF A DETAINER BECAUSE HE WAS IMPRISONED FOR SEVERAL MONTHS WHILE THERE WAS A PENDING ARREST WARRANT OF WHICH THE PRISON AUTHORITIES HAD KNOWLEDGE NOR REMANDED THE CASE FOR A HEARING TO DETERMINE WHETHER ANY DELAY WAS REASONABLE.

The criminal complaint was filed in Circuit Court on February 29, 1988. COMPLAINT, Jt. App. at 2. The Defendant's rights under the IAD should have become effective when he was sentenced in April or May of 1988. Since he was not informed of his rights under the IAD until September 7th, 1988, several months after the detainer was placed on him, he was unable to request disposition. However, he did submit his written REQUEST FOR DISPOSITION to Indiana prison authorities on that date. On September 9, 1988, there was a letter attached to the prosecutor's answer from Michael Broglin, Superintendent of the Westville Correctional Center, regarding the Defendant and the documents he had signed. Tr. at 4. Whether the letter was transmitted to the prosecutor is unknown. However, a letter was sent from the Indiana

Prison authorities on September 20th, postmarked September 22, which contained the Defendant's REQUEST FOR DISPOSITION. It appears to have been received in Jackson, Michigan on September 26, 1988. Tr. at 4.

The fact that a prisoner has a "hold" or detainer placed against him often results in increased duration and harsher conditions of confinement. *Smith v. Hooey,* 383 U.S. 374 (1969). In counsel's experience, the result is not merely increased punishment, but delayed rehabilitation, since the availability of training and employment programs decreases as the level of custody increases.

Section (c) of Art. III of the IAD states the following:

> The warden, commissioner of corrections or other official having custody of the prisoner **shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition** of the indictment, information or complaint on which the detainer is based. (emphasis added).

IAD, Art. III(c), 18 U.S.C.A. App. § 2.

The IAD provisions are triggered only after a "detainer" is filed with the custodial state by the state having untried pending charges. *People v. Paulus,* 115 Mich. App. 183, 320 N.W.2d 337 (1982). A detainer is a "notification filed with the institution where a prisoner is serving a sentence advising him that he is wanted to face pending criminal charges in the notifying state." *Id.* at 186. Therefore, the first thing to determine is when the detainer was filed against the Defendant.

On February 29, 1988, the 12th District Court of Jackson, Michigan had record of where the Defendant was located. A warrant was filed which showed that the Defendant was in the Fort Wayne, Indiana jail. It flies in the face of counsel's experience to suggest that Michigan did not have a detainer placed on the Defendant with the Indiana court. To believe that the Defendant would have been permitted his freedom if the Indiana prosecution had ended in dismissal or acquittal is unthinkable. Therefore, the detainer and the Defendant's rights under the IAD, vested at his sentencing.

According to the IAD, once the detainer was placed on the Defendant, the Indiana prison authorities were obligated to inform the Defendant of his right to final disposition without delay. The prisoner must be informed of his rights under the IAD, but he in turn must sign the appropriate forms to notify both the prosecuting attorney and trial court of his whereabouts and his decision to invoke his right to REQUEST FOR DISPOSITION. This method guarantees all parties an equal opportunity to protect their rights. *Edmonds v. Corrections Department,* 78 Mich. App. 196, 203, 259 N.W.2d 423, 427 (1977). In *People v. Office,* the Defendant was informed by the Wisconsin authorities that a detainer had been lodged against him, but he was denied the opportunity to request final disposition because the portion of the form allowing him this request had been crossed out. Therefore, the Defendant did not have knowledge of his rights under the Detainer Act. *People v. Office,* 126 Mich. App. 597, 603, 337 N.W.2d 593, 595 (1983). The court recognized that once a detainer has been filed, failure to bring formal charges violates the good faith and spirit of the IAD as it keeps the Defendant

from asserting his rights under the Act. *Id.* at 603, 337 N.W.2d at 595. Failure to inform the Defendant of his rights was a violation of Article III(c) of the IAD. *Id.* at 603-604, 337 N.W.2d at 595-596.

Here, the detainer was placed on the Defendant in April of 1988, yet he was not informed of this until September 7, 1988; almost six months later. This is a flagrant violation of the Detainer Act. Tr. at 5. A prisoner should not be penalized if the prison officials fail to carry out their duties under the IAD. *People v. Bowman,* 189 Mich. App. 215, 218-219, 472 N.W.2d 645, 647 (1991). By placing the burden of compliance on the officials of the sending and receiving states, the remedial objectives of the IAD will not be thwarted by contributory inaction of the sister states. *Nelms v. State,* 532 S.W.2d 923 (Tenn. 1976). The burden of the violation by the officials in the sister state should fall on the shoulders of the prosecutor. *People v. Marshall,* 170 Mich. App. 269, 277, 428 N.W.2d 39, 42 (1988). Therefore, the delay must be attributed to the prosecution.

Since the Defendant was not promptly advised of his rights under the IAD, he was denied equal protection under the law. The 180 day limit should have started to run from the date of the Defendant's sentencing in April of 1988 and would have ended in October of 1988. The Michigan Supreme Court's decision that the 180 days does not begin until September 26, 1988 was in error.

This issue was raised in the trial court. Tr. at 5-6. It was again urged in the Michigan Court of Appeals. *People v. Fex,* No. 119192, Appellant's Brief at 5. The court of appeals did not reach this issue since it held that the 180-

day time limit started on the day he tendered the REQUEST FOR DISPOSITION to Indiana authorities. The issue was presented to the Michigan Supreme Court. *People v. Fex,* No. 91979, Brief Opposing Application for Leave to Appeal at 4-5. The court rejected the Petitioner's argument on this issue. *People v. Fex,* 439 Mich. 117, 123 n. 9, 479 N.W.2d 625, 628 n. 9 (1992). The issue has been properly reserved for decision by this Court.

CONCLUSION

A prisoner need only convey the written notice and request to appropriate prison officials to fulfill the requirements of the IAD. Service should be complete when the prisoner tenders the request to his warden's representative and the 180-day period under the IAD should begin to run. Respondent contends that the period does not run until the request is received by the Prosecutor in the receiving state. Petitioner urges that the period should begin when the prisoner tenders the request to prison authorities in the sending state. There are decisions supporting both sides, but the Petitioner's position represents both the majority and the correct view.

Calculating the 180-day period from the date the defendant tenders the request to prison authorities prevents sending state officials from diluting or vitiating the inmate's right to speedy trial once invoked. Fairness requires the burden of compliance with the requirements of the IAD to be placed entirely on the law enforcement officials involved, since the prisoner has little ability to

enforce compliance other than after the fact. The interpretation urged by the Petitioner, and adopted by numerous courts, would not impede the orderly administration of justice. The prosecutor would lose no more than the few days it takes for mail to be delivered. Where there is a lengthy delay in delivery, or where the request is lost in the mail, the IAD permits the prosecutor to request a continuance. The prosecutor should experience little difficulty in showing the date on which the request was mailed and the date on which it was received, or that it was never received.

The Defendant was not informed of his right under the IAD until several months after he had been sentenced while there was a pending detainer from another state. The IAD provisions are triggered when a "detainer" is filed with the custodial state by the state having untried pending charges. A detainer is a "notification filed with the institution where a prisoner is serving a sentence advising him that he is wanted to face pending criminal charges in the notifying state."

According to the IAD, once the detainer was placed on the Defendant, the Indiana prison authorities were obligated to inform the Defendant of his right to final disposition without delay. Petitioner should not be penalized if prison officials fail to carry out their duties under the IAD. The burden of the violation by the officials in the sister state should fall on the shoulders of the prosecutor. Therefore, the delay must be attributed to the prosecution. The 180-day limit should have started to run from the date of the Defendant's sentencing. The Michigan Supreme Court's decision that the 180 days did not begin until the prosecutor received the request was error.

For these reasons, Petitioner requests that this Court REVERSE the decision of the Michigan Supreme Court and REMAND his case with instructions to DISMISS the prosecution for violation of the 180-day time limit of the Interstate Agreement on Detainers.

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Docket No. 91-7873

IN THE UNITED STATES SUPREME COURT

October Term, 1992

WILLIAM FEX,

Petitioner,

v

STATE OF MICHIGAN,

Respondent.

ON WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

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QUESTIONS PRESENTED FOR REVIEW

I.

WHETHER THE INTERSTATE AGREEMENT ON DETAINERS' 180 DAY PERIOD BEGINS TO RUN WHEN THE PROSECUTOR RECEIVES THE INMATE'S REQUEST OR EARLIER.

II.

WHETHER PETITIONER IS ENTITLED TO A TOTAL DISCHARGE FOR AN ALLEGED III(c) VIOLATION WHERE HE HAS NOT SHOWN (1) THAT THE FORMS WERE IN FACT NOT "PROMPTLY" DELIVERED TO HIM, (2) WHY THE FORMS WERE NOT DELIVERED EARLIER, AND (3) ANY PREJUDICE.

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CITATION OF THE OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW

People v. Fex, 439 Mich. 117, 479 N.W.2d 625 (1992), cert. granted ___ U.S. ___, 118 L.Ed.2d 542 (1992).

People v. Fex, Michigan Court of Appeals docket number 119192, released 06/21/91.

People v. Fex, Jackson County Circuit Court file number 88-49555-FC, released 03/23/89.

STATEMENT OF THE CASE

On March 23, 1989, petitioner was convicted by a jury of armed robbery, Mich. Comp. Laws sec. 750.52, and felony firearm, Mich. Comp. Laws sec. 750.227b. Subsequently, on April 20, 1989, Jackson County Circuit Court Judge Gordon Britten sentenced him to consecutive terms of 2 and 5 to 20 years imprisonment (concurrent to the sentence that he was serving in Indiana). On June 21, 1991, however, the Michigan Court of Appeals reversed the conviction and ordered the charges dismissed. Then, on January 9, 1992, the Michigan Supreme Court summarily reversed the Michigan Court of Appeals' decision and reinstated the conviction. 439 Mich. 117, 479 N.W.2d 625 (1992). This Court granted certiorari on May 18, 1992. ___ U.S. ___, 118 L.Ed.2d 542 (1992).

On December 8, 1987, between 1:00 and 1:30 a.m., petitioner robbed a Rax restaurant in Jackson with a shotgun. (Trial Transcript [Tr], pp. 48-49, 53-54).

He took between $350.00 and $450.00. (Tr, p. 60).

Petitioner eventually was convicted on unrelated charges in Indiana. He eventually was transferred to the Westville Correctional Facility in Michigan City, Indiana, to serve the time. Michigan placed a detainer with that facility against him for the charge in the present case. On September 7, 1988, petitioner requested, pursuant to the Interstate Agreement on Detainers, Article III, that the untried charge (in the present case) be disposed of. Respondent received the paperwork from the Indiana warden on September 26, 1988.

About ten days before trial started, petitioner filed a motion to dismiss claiming that the Interstate Agreement on Detainers had been violated. He argued that both Articles III and IV applied. He claimed that he should have been tried within 180 days of September 22, 1988, the day that his request for final disposition

was mailed by the prison to respondent. He also argued that the 180 day period should have started earlier claiming that he could have been informed of his rights earlier. (Tr, p. 5). He also argued that he should have been tried within 120 days of October 26, 1988, the date that he was physically returned to Michigan. The parties argued the motion on March 22, 1989, the first day of trial. In denying the motion to dismiss, Judge Britten first ruled that the 120 day rule was not violated because Article IV does not apply because respondent had not initiated the extradition. (Tr, pp. 11-12). He then stated:

> The Court is quite satisfied that the time is triggered by receipt of the notice by the prosecutor otherwise you'd have no way of knowing that the matter was in process and he could be denying the People of their rights to

prosecution without ever being aware that the matter was received, so it makes sense to us that date to start our time running here leaves 182 [sic] days court file reflects to today. We have a delay of seven days because the transcript would not be ready for the arraignment in Circuit Court and that seven-day delay was not the fault of the prosecutor nor the defendant but because the reporter was not able to get the transcript out in one week so that was a seven-day delay there which would take away from 182 [sic] and leave us with 175 [sic] days.

* * *

I see my first mistake. I started off with nine days in September and that would not be correct. It's an error. We're under 177 days to today. Thank you. (Tr, pp. 12-13).

The Michigan Court of Appeals, however, on June 21, 1991, disagreed:

> Michigan case law is clear and the commencement of the 180-day statutory period was triggered by the defendant's request for final disposition to the prison officials in this case. People v Malone, 177 Mich App 393, 399; 442 NW2d 658 (1989); People v Marshall, 170 Mich App 269, 276-277; 428 NW2d 39 (1988). Since the charges against defendant were not brought to trial within the requisite 180-days, and noting that no exceptions to the statutory requirement are claimed, dismissal of the charges against defendant is mandated. People v Joseph Bowman, ___ Mich App ___; ___ NW2d ___ (Docket No. 69453, decided May 7, 1991, 9:35 a.m.).

Then, however, on January 9, 1992, the Michigan Supreme Court summarily reversed the Michigan Court of Appeals' judgment and reinstated the conviction:

> In light of all these considerations, we are persuaded that the majority rule should be adopted in Michigan. We thus conclude that the Court of Appeals erred when it found that the defendant was not tried within the 180 day period stated in Article III(a) of the IAD. 439 Mich. 123-124.

It also summarily rejected petitioner's other arguments in a footnote. 439 Mich. 124, fn. 8. Five Justices signed the majority opinion. The two Justices who dissented did so claiming: "Peremptory disposition is not appropriate." 439 Mich. 124. They took no position on the substantive issues.

ARGUMENT

I.

BECAUSE PETITIONER WENT TO TRIAL WITHIN 180 DAYS AFTER RESPONDENT RECEIVED HIS REQUEST UNDER THE INTERSTATE AGREEMENT ON DETAINERS, HIS CONVICTION SHOULD NOT BE DISMISSED.

The Michigan Supreme Court correctly analyzed the issues and properly rejected each of petitioner's arguments. In the present case, Article III's 180 day period began on September 26, 1988, when respondent received petitioner's request for speedy disposition. This Court has already said so, the Congressional history says so also, and, despite petitioner's assertions to the contrary, the vast majority of jurisdictions in the country say so too. As it is, ruling that the 180 day period begins when the prosecutor receives the request will make the system

more efficient than otherwise. The receiving state will be able to immediately calculate precisely when trial should begin and will not be penalized (1) should the sending state omit certain documents and/or (2) delay sending the papers to the prosecutor. 180 days is just not that much time to ready a case for trial as it is. The amount of time it takes for a request to work its way through a prison's bureaucracy should not lie on the government.

To a certain extent, this case is directly controlled by this Court's language in Carchman v. Nash, 473 U.S. 716, 721 (1985), where this Court stated that the period in fact starts when the prosecutor receives the request:

> Specifically, Article III requires the warden to inform the prisoner that a detainer has been lodged against him and that he may request final disposition of the

> indictment, information, or complaints upon which the detainer is based. If the prisoner makes such a request, the warden must forward it, along with a certificate providing certain information about the prisoner's terms of confinement, to the appropriate prosecuting official and court of the receiving State. The authorities in the receiving State then must bring the prisoner to trial within 180 days absent good cause shown or the court must dismiss the indictment, information, or complaint with prejudice and the detainer will cease to be of any force or effect. (Emphasis added.)

This language in Carchman is completely consistent with the legislative history. Senate Report No. 91-1356, 91st Congress, 2d Session, 3 U.S. Code

Congressional & Administrative News, p. 4865 (1970), states:

> Under the agreement, prison authorities are required to inform prisoners of all indictments, informations, or complaints on the basis of which detainers have been lodged against them by other jurisdictions. Prisoners may then request trial on such pending charges. Any request is transmitted through the warden to the proper official in the other jurisdiction <u>who then has 180 days to bring the prisoner to trial</u>.
>
> (Emphasis added.)

This conclusion is further buttressed by the Deputy Attorney General's letter to Congress concerning the IAD which is found on page 4868 of the same Congressional Administrative News Report:

> Article III of the Agreement provides that the inmate may make

> a request for the disposition of all pending charges upon which detainers are based by applying to the officials in whose custody he is placed, and that application will be forwarded to authorities of the jurisdiction in which charges are pending. The person must be brought to trial within 180 days thereafter.

Petitioner, on the other hand, has not in any way claimed that either <u>Carchman</u> or the Congressional history do anything but support respondent. He completely ignores them. As it is, although Michigan Supreme Court Charles Levin's comment that committee reports' integrity have been challenged may be correct in certain instances, no one has in any way challenged the integrity of the reports that respondent and the Michigan Supreme Court have relied on. Further, this Court itself

has relied on such reports. In Wisconsin Public Intervenor v. Mortier, 501 U.S. ___, 111 S. Ct. 2476 (1991), eight Justices of this Court relied on reports (from the same year, 1971, that respondent is relying on) to interpret a legislative act. In addition, in United States v. Mauro, 436 U.S. 340, 355, fn. 22 (1978), this Court itself relief on this very Committee Report in interpreting the IAD.

Next, despite petitioner's erroneous statement to the contrary, the vast majority of jurisdictions in this country have interpreted the 180 day period of Article III of the IAD as starting when the prosecutor received the request and not when the defendant makes the request. In State v. Braswell, 194 Conn. 297, 481 A.2d 413, 417 (1984), cert. denied 469 U.S. 1112 (1985), the Connecticut Supreme Court ruled:

> Given the IAD's use of the word "sent" in subsection (b), we must

> presume that its use of the word "delivered" in subsection (a) signifies its recognition of different meanings commonly attributed to each word. . . . It follows that had the IAD intended the 180 day disposition period to commence when the prisoner placed his or her request with the custodial officials, subsection (a) like subsection (b), would refer to the date on which the prisoner causes the request to be sent, rather than the day on which it was caused to be delivered.

Further, as stated in Young v. Mabry, 471 F.Supp. 553, 561 (E.D.Ark. 1979), affd. 596 F.2d 339 (8th Cir. 1979), cert. denied 444 U.S. 853 (1979):

> The Court is satisfied that the plain language of Article III . . . . leads to the conclusion

that the date of the receipt of notice by the prosecuting authorities triggers the statutory period. The key word in the statutory language is "delivered" and comporting with the purpose of the notice provision, the term would have little meaning if something other than the receipt of the notice were contemplated.

Likewise, as ruled by the New Jersey Superior Court, Appellate Division, in State v. Ternaku, 156 N.J.Super. 30, 383 A.2d 437, 439 (1978), certif. denied 77 N.J. 479, 391 A.2d 494 (1978):

> The language of the statute is explicit. It provides for the commencement of the 180-day period when defendant has "caused to be delivered to the prosecuting officer and the appropriate court" the written notice and request for

final disposition of the pending indictment. The Legislature clearly intended that the documents be delivered to the prosecutor and the appropriate court before the 180-day period starts to run. The period does not start to run upon mere execution and delivery of the notice and request to the warden, commissioner of corrections or other official, having custody of defendant. In our view it would be contrary to the public interest to start the running of the 180-day period prior to actual receipt of the notice and request by the prosecutor and the court. If we were to interpret the statute as defendant requests, an indictment would be subject to dismissal each time delivery of

the documents to the prosecutor and court is delayed, regardless of cause. We cannot conceive our Legislature as intending such a result by enacting the Interstate Agreement on Detainers. As a matter of fact, if the Legislature intended the 180-day period to begin from the time a defendant delivers the notice to the warden, commissioner of corrections or other official having custody over him, it would have so signified by appropriate language.

Many other cases as well have ruled (or at least have stated) that the trigger date for the 180-day period is the date that the prosecutor receives the request from the warden and not the date that the inmate gives the request to the warden. Among these cases are: United States v. Nesbitt, 852 F.2d 1502, 1516 (7th Cir.

1988), cert. denied 488 U.S. 1015 (1989); Casper v. Ryan, 822 F.2d 1283, 1291 (3rd Cir. 1987), cert. denied 484 U.S. 1012 (1988); Browning v. Foltz, 837 F.2d 276, 283 (6th Cir. 1988), cert. denied 488 US 1018 (1989); United States v. Ricketson, 498 F.2d 367 (7th Cir. 1974), cert. denied 419 U.S. 965 (1974); Beebe v. Vaughn, 430 F. Supp. 1220 (D.Del. 1977); Saffold v. State, 521 So.2d 1368, 1370 (Ala.Crim.App. 1987); Spears v. State, 280 Ark. 577, 660 S.W.2d 913 (1983); People v. Wilson, 69 Cal.App.3d 631, 138 Cal.Rptr. 259 (1977); People v. Bielecki, 41 Colo.App. 256, 588 P.2d 377, 378 (1978); State v. Minnick, 413 So.2d 168, 169 (Fla.App. 1982); Thompson v. State, 186 Ga.App. 379, 367 S.E.2d 247, 249 (1988); Holland v. State, 265 Ind. 216, 352 N.E.2d 752, 757 (1976); State v. White, 234 Kan. 340, 673 P.2d 1106, 1110 (1983); Hines v. State, 58 Md.App. 637, 473 A.2d 1335, 1341 (1984); State v. Walton, 734

S.W.2d 502, 504 (Mo. 1987); State v. Grant, 227 Mont. 181, 738 P.2d 106, 110 (1987); People v. Vrlaku, 73 N.Y.2d 800, 537 N.Y.S.2d 24, 533 N.E.2d 1053, 1054 (1988); State v. Reitz, 26 Ohio App.3d 1, 26 Ohio Br. 168, 498 N.E.2d 163, 164 (1984); State v. Arwood, 46 Or. App. 653, 612 P.2d 763, 764 (1980); Commonwealth v. Fisher, 451 Pa. 102, 301 A.2d 605, 606 (1973); State v. Default, 540 A.2d 355, 356 (R.I. 1988); State v. Moore, 774 S.W.2d 590, 595 (Tenn. 1989).

These cases in fact constitute the majority view. Anno: Validity, Construction, and Application of Interstate Agreement on Detainers, 98 A.L.R.3d 160, 208. Petitioner's erroneous claim to the contrary that his position is the majority rests on an overly broad statement in one case. Dealing with a different issue, Commonwealth v. Martens, 398 Mass. 674, 500 N.E.2d 282, 284 (1986), cert. denied 481 U.S. 1041 (1987), stated:

> The Commonwealth correctly concedes that the 180-day period commences when a defendant files his request with the correctional authorities in the sending State, and not when those authorities forwarded the request to the receiving State. Although we have not had occasion to consider the question, we agree with the majority of jurisdictions that have addressed the issue that a prisoner need only transmit the written notice and request for final disposition to the appropriate custodial officials in order to fulfil completely his responsibility under the agreement.

Martens was not dealing with the issue presented in the present case. Instead, it was dealing with what an inmate needed to

do to trigger Article III. In fact, the above quoted language is dicta because the Massachusetts Supreme Judicial Court in the end ruled that the defendant was entitled to no relief at all because he had not even invoked Article III.

In addition, very few of the cases that petitioner cites actually support him on this point. Although Burns v. State, 578 S.W.2d 650 (Tenn.Crim.App. 1978), does, it was actually explicitly overruled on point by Moore, supra, 774 S.W.2d 594. Moore is the case that the Michigan Supreme Court relied on very heavily for its conclusion that the majority supports respondent.

Pittman v. State, 301 A.2d 509 (Del. 1973), does not support petitioner either. In that case, the prosecutor did not try to even extradite the defendant within the requisite 180 days. Both Maryland and Delaware failed to comply with the Act. As

it is, if anything, Pittman supports respondent, not petitioner. In Pittman, the Delaware Supreme Court specifically stated: "In such a case, the State must respond and bring the prisoner to trial within 180 days after written notice is delivered to the prosecutor's office." 301 A.2d 512. At no time did it ever state that the 180 period begins on the day that the prisoner delivers his request to the warden.

Next, Rockmore v. State, 21 Ariz.App. 388, 519 P.2d 877 (1974), does not support petitioner either. It did not address this issue. In Rockmore, the trial had not started within 180 days of either of the two relevant starting dates. The issue decided was whether or not the appropriate certificates had been sent to the prosecutor thus triggering the Act.

Although Ward v. State, 435 N.E.2d 578 (Ind.App. 1982), although ambiguous, can be

read to support petitioner, if it in fact supports petitioner, it directly contradicts Holland, supra. The Indiana Supreme Court has never retreated from Holland. Its decisions have more persuasive authority than do the decisions of the Indiana Court of Appeals.

Gibson v. Klevenhagen, 777 F.2d 1056 (5th Cir. 1985), does not support petitioner. No where in Gibson did the Fifth Circuit even state (let alone decide) when the 180 day period begins.

People v. Masselli, 17 App.Div.2d 367, 234 N.Y.S.2d 929 (1962), next, does not support petitioner. Unlike what happened in the present case, in Masselli, the documents were never forwarded on to the prosecutor. In the present case, they were forwarded on only 15 days later. In any event, even if Masselli can be read to support petitioner, it was eventually overruled in the New York Court of Appeals' unanimous decision in Vrlaku, supra.

Next, State v. Ferguson, 41 Ohio App.3d 306, 535 N.E.2d 708 (1987), does not even address this issue either. In Ferguson, the years delay occurred because the papers had been mismailed. This issue did not even arise. In any event, the court did not disagree with its earlier decision in Reitz, supra.

Next, State v. Lippolis, 101 N.J.Super. 435, 244 A.2d 531 (1968), affd. 107 N.J.Super. 137, 257 A.2d 705 (1969), revd. on other grounds, 55 N.J. 354, 262 A.2d 203 (1970), did not deal with this issue but instead with tolling provisions and extending the 180 day period for good cause. It was even mentioned in Ternaku, supra, 383 A.2d 439.

Last, United States v. Reed, 910 F.2d 621 (9th Cir. 1990), does not help petitioner either. Reed did not decide when the 180 day period starts. Instead, it ruled as it did because the defendant

had been misled by a deputy and had not been given the correct form.

In fact, even some of the cases listed in the Michigan Supreme Court's opinion in the present case and in Moore as supporting petitioner actually do not. McCallum v. State, 407 So.2d 865 (Ala.Crim. 1981) did not even decide the issue. It did not even find a 180 day rule violation. It ruled that the defendant had not even triggered Article III.

Next, People v. Dailey, 46 Ill.App.3d 195, 4 Ill.Dec. 756, 360 N.E.2d 1131 (1977), did not rule in petitioner's favor either. It reversed the lower court and reinstated the indictment against the defendant. It ruled that the defendant's earlier letter had not complied with the Act and thus did not invoke it. Therefore, any language supporting petitioner is, at best, dicta.

Last, State v. Wells, 186 N.J.Super. 497, 453 A.2d 236 (1982), does not support

petitioner either. Wells deal with a different issue, a violation of subsection (b), the prison's failure to send the inmate's request to the prosecutor. In fact, Wells specifically stated that it was not at all contradicting Ternaku. 453 A.2d 238. As noted above, Ternaku directly supports respondent.

As it is, the one case that definitely did support petitioner, the Michigan Court of Appeals' unpublished opinion in the present case, did not even use any analysis in arriving at its decision. It not only completely ignored the Act's Legislative history, but it ignored the vast majority of the cases.

The Michigan Supreme Court on the other hand, noted each of these points in summarily rejecting petitioner's claims. It first looked at the actual language of the statute itself:

> In Article III(b), the IAD states a prisoner's duty to give or send

the request to the prison authorities who are holding him. Similar language, which would indicate that the 180-day period runs from the date the request is given or sent to prison authorities, could easily have been employed in Article III(a), if the drafters had been so inclined. Instead, the period runs from the time when the prisoner has caused delivery, which is actual receipt. 439 Mich. 120.

Then, it quoted from this Court's language in Carchman, supra, 473 U.S. 721. 439 Mich. 120. Then, it quoted from the United States Senate Judiciary Committee's report. 439 Mich. 121. Last, it quoted Moore, supra, 774 S.W.2d 595, in noting that the vast majority of jurisdictions have interpreted the IAD this way. 439 Mich. 121-122.

The Michigan Supreme Court even stated:

> An obvious purpose of an interstate agreement is to achieve a uniform body of law in the jurisdictions that have enacted the agreement. Absent sound reasons to the contrary, it is therefore sensible to interpret such an agreement in the same manner as a majority of other jurisdictions. 439 Mich. 121, fn. 5.

This analysis makes sense. The majority rule is so strongly accepted across this country that the paper presented by David Slade of the Department of Corrections in Massachusetts at the National Association of Extradition Officials held June 7-10, 1992, in Portland, Maine, has the following statement on page 6 in both bold face and italics: "The prisoner must be brought to

trial within 180 days of the time the prosecutor received the prisoner's request for disposition and accompanying documents. . . ." Changing (in effect) the law now would jeopardize numerous prosecutions which have relied on the majority rule. Petitioner should have to present better reasons than he has to have this Court change the way that this Act has been almost universally interpreted.

Other, more substantial, reasons exist as well why both the Michigan Supreme Court and Jackson County Circuit Court Judge Gordon Britten correctly ruled that subsection (a)'s 180 day rule should begin when the prosecutor receives the request rather than when the inmate delivers the request to the warden. Processing the request takes time. 180 days is not that long in the first place, especially if the case is complicated. The prison sending the inmate's request to the prosecutor is

not as easy as it sounds. It must do a number of things, by statute, once it receives an inmate's request. It must make up a certificate which tells the requesting prosecutor the terms of the inmate's present commitment, the time that he has served, the time that he has left remaining, the amount of good time, his parole eligibility, and the State's decisions on parole. He must then send to the prosecutor a written notice and a certificate. In addition, petitioner was not the only inmate in the Indiana Westville Correctional Facility at the time. Prison officials have more duties than merely forwarding prisoner requests. The prison sending respondent the forms within only 15 days is actually surprising. As anyone in government knows, bureaucratic delays exist, especially during this era of budget cutbacks. Forwarding the request could very easily have taken a few months.

Further, IAD cases are special. One does not merely walk over to a prison in another State and announcing an intention to pick up this inmate. Procedures must be complied with and forms filled out. These procedures take time. IAD forms VI and VII must be filled out before an inmate may be picked up. These forms require signatures from 1) a local judge, 2) the prosecutor, 3) the person who will transport the prisoner, and 4) the receiving State's IAD Administrator. Because not each of these people work in the same city, the forms must be sent through the mail a number of times. The Administrator will not sign the form until the transportation person has signed. The transportation person will not sign until he has arranged a date with the prison for the pickup. These seemingly simple tasks take time. Weeks or months (all countable against the prosecution) can go by before the defendant is even returned to the receiving State.

Then, if the case is complicated or involves numerous witnesses, 180 days (especially with docket congestion) is just not that long. Although the present case was not complicated and did not involve numerous witnesses, it did have an unusual aspect which took time. Respondent's star witness, Susan Alexander, was herself an inmate in another Indiana prison at the time. Hence, respondent had to bring her in pursuant to the Uniform Act to Secure the Attendance of Witnesses from within the State in Criminal Proceedings. Mich. Comp. Laws sec. 767.91, et seq. This procedure, of course, took time. Once again, one does not just walk up to another State's prison announcing an intention to take away an inmate.

In addition, having the 180 day rule begin when the inmate delivers his request to the warden makes matters too uncertain. Because IAD cases are not the only cases on

court's dockets, the courts will schedule them with an eye toward a deadline. If they do not know the deadline, however, scheduling can become very difficult. The prosecutor will not necessarily receive anything specifically mentioning the exact date when the inmate delivered his request to the warden. In other words, petitioner's position allows for too many pitfalls. Too many things can go wrong which would mandate dismissing the criminal charges.[1]

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[1]In fact, conceivably, the inmate could backdate his request on the hope that the prison bureaucracy will not notice the discrepancy. On the other hand, as long as the requests are sent by certified mail, as in the present case, prosecutors will not be able to fraudulently change the date when they received the request.

Petitioner's argument that "there would be neither a legal nor a practical limit on the length of time prison authorities could delay forwarding a REQUEST FOR DISPOSITION under the IAD," is wrong. Such a problem would be a violation of subsection (b), something that did not occur in the present case. Instead, subsection (a) is at issue. As it is, in the present case, the Michigan Supreme Court specifically declined to address this issue. 439 Mich. 123, fn. 6. As it is, it has subsequently granted leave to appeal in a case to specifically address it. People v. Bowman, 439 Mich. 995, ___ N.W.2d ___ (1992).

All in all, the Michigan Supreme Court and Judge Britten were right. Not only does the Legislative history support this decision, but the vast majority of jurisdictions and this Court's own language in Carchman supports it as well. Further,

starting the 180 day period when the prosecutor received the request is more efficient. It will better promote the Act's purposes without unnecessarily requiring numerous criminal convictions or charges to be dismissed.

ARGUMENT

II.

BECAUSE PETITIONER HAS NOT SHOWN (1) THAT THE FORMS WERE IN FACT NOT "PROMPTLY" DELIVERED TO HIM, (2) WHY THE FORMS WERE NOT DELIVERED EARLIER, AND/OR (3) ANY PREJUDICE AT ALL, HE IS NOT ENTITLED TO A TOTAL DISCHARGE FOR AN ALLEGED ARTICLE III(c) VIOLATION.

For two reasons, petitioner is not entitled to any relief on this issue. First, he has not shown any Article III(c) violation. He relies on nothing but his own speculation that the prison system in fact did not "promptly" tell him about Michigan's detainer. Second, even if Article III(c) were violated, he is still not entitled to any relief. Whichever of the two approaches this Court takes,

because he has not even alleged any kind of prejudice whatsoever, he is not entitled to a total dismissal.

First, petitioner has not shown any Article III(c) violation. The burden of proving an IAD violation rests on the criminal defendant. Seymore v. Alabama, 846 F.2d 1355, 1360 (11th Cir. 1988). To discharge his burden, petitioner relies on nothing but his own speculation. He not only does not present any evidence, but has never presented any evidence even as to when the detainer was filed against him. This Court, of course, is not a fact finding court (especially in an appeal from a State conviction). The record is too incomplete to support petitioner's allegations. Of course, the IAD is not triggered until a detainer is actually lodged. Mauro, supra, 436 U.S. 361, 362.

In any event, petitioner has not shown, even if the detainer had been filed

as early as May 24, 1988, when he was sentenced in Allen County, Indiana, that he was not in fact "promptly" informed under III(c).[2] The record does not explain one way or the other why no one delivered the request to him until September 7, 1988. There could be good reasons; there could be bad reasons. After all, petitioner was not necessarily delivered to the Indiana Department of Corrections on the day of sentencing. He may have been in the Allen County jail for a while. Then, he may have been temporarily detained in the Indiana Reception and Diagnostic Center for a while. The record does not explain when petitioner even first arrived at the

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[2]Nothing before May 24, 1988, can possibly count. The IAD does not apply if the inmate is merely incarcerated in a jail awaiting sentence. United States v. Glasgow, 790 F.2d 446, 448 (6th Cir. 1985), cert. denied 475 U.S. 1124 (1986).

Westville Correctional Facility.[3] Further, why necessarily should the papers have been delivered to petitioner earlier? More logically, he should be given them once he is settled into the Department of Corrections system. Forcing each State's prison system to give these papers to inmates while they are still in reception centers would not be efficient. Mistakes, on everyone's part, occur when people are still in transit. The inmates themselves could lose their papers while being

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[3]If petitioner is willing, respondent will stipulate for purposes of this appeal to this Court that petitioner was transferred from the Allen County jail to the Indiana Reception and Diagnostic Center in Plainfield, Indiana, on July 19, 1988. He was then transferred to the Westville Correctional Facility on August 24, 1988.

transferred to their ultimate destination.

Second, even if Article III(c) is somehow violated, petitioner is still not entitled to any relief. He has not even alleged in the least any prejudice whatsoever. Discharge for such a violation (assuming that it even occurred) is too draconian. Neither line of cases in this country that has addressed this issue would call for a discharge.

As it is, the cases are split on whether or not a criminal defendant is entitled to any relief for an Article III(c) violation. Some of the cases note that the IAD fails to provide any remedy for an Article III(c) violation and thus have ruled that the inmate has no remedy. In Commonwealth v. Gonce, 320 Pa. Super. 19, 466 A.2d 1039, 1044 (1983), the Pennsylvania Superior Court stated:

> Notwithstanding our doubt that appellant was fully informed of

his rights, we do not agree that the Delaware prison officials' lapse dictates that the Pennsylvania charges be dismissed. The Detainers Agreement specifically provides for a remedy of dismissal of charges in three situations: (1) if trial is not commenced within the period prescribed in Art. III(a) and Art. IV(c) as specified by Art. V(c); (2) under Art. IV(e) where trial does not commence before the prisoner is returned to the sending state; and (3) when the refusing state fails or refuses to accept temporary custody under Art. V(c). Because the legislature chose to mention these specific situations when dismissal of charges is the appropriate relief, we will not generalize the relief and extend it to cover

possible procedural errors made by another state's prison officials. Accordingly, under the Detainers Agreement we will not dismiss the Commonwealth's charges against appellant.[2]

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[2]The appropriate vehicle for relief may be a civil lawsuit against Delaware prison officials. See Cuyler v. Adams, [449 U.S. 433 (1981)].

In Schin v. State, 744 S.W.2d 370 (Tex.App. 1988), the Texas Court of Appeals followed both Gonce and State v. Clark, 222 Kan. 65, 563 P.2d 1028 (1977), and stated:

> Inasmuch as the legislature chose to specify situations when dismissal is the appropriate remedy, the courts should not expand that relief to cover

possible procedural errors made by another state's prison officials. . . . . Moreover, we agree that "a legislative enactment providing for a speedy trial, with no sanction for failure to comply with the mandate, is generally construed as directory." Kansas v. Clark, 22 Kan. at 68-69, 563 P. 2d at 1032. Although we may sympathize with appellant, we find no authority in the statute to warrant dismissal of the Texas offenses. Accordingly, we hold that in this case, the IAD does not mandate dismissal of the Texas indictment for delays which occurred prior to Dallas County's receipt of appellant's request for speedy trial.

In addition, in State v. Reynolds, 218 Neb. 753, 359 N.W.2d 93 (1984), the

Nebraska Supreme Court stated, while construing a similar alleged IAD violation:

> The agreement does not require that the additional burden of proving that the sending state promptly complied with its provisions be placed on the receiving state, nor shall we. Under the particular facts of this case the request for temporary custody was in proper form and timely. No explanation appears in the record for the federal authorities' delay in responding to the Nebraska prosecutor's "request for custody." The prosecutors in this case are blameless and helpless, in view of the seeming disregard of the law by federal authorities.

> The agreement provides for the remedy of dismissal of charges with prejudice only in three specific cases, not including possible errors made by another party's prison officials. . . . Because the Legislature chose to mention specific situations when dismissal of charges is appropriate, we will not extend such relief for a custodial state's failure to promptly deliver a person to the receiving state pursuant to a proper request for custody.

As it is, as mentioned above, this Court need not decide whether this line of cases as opposed to the second line is correct. Under either line, petitioner is entitled to no relief. Under the second line of cases, dismissal is allowed in only

extraordinary circumstances State v. Smith, 686 S.W.2d 543 (Mo.App. 1985).[4] These cases require a case-by-case approach. State v. Barefield, 110 Wash.2d 728, 756 P.2d 731 (1988). No hard and fast rule is accepted. Coit v. State, 440 So.2d 409 (Fla.App. 1983). To a large extent, these cases invoke the balancing principles of this Court's decision in Barker v. Wingo, 407 U.S. 514 (1972). State v. Herring, 210 Conn. 78, 554 A.2d 686, 692 (1989), cert. denied 492 U.S. 912 (1989). In Herring,

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[4]Although at one time, Colorado had a rule pretty much mandating dismissal for an Article III(c) violation, Romans v. District Court, 633 P.2d 477 (Colo. 1981), it has since repudiated such an approach. People v Higginbotham, 712 P.2d 993 (Colo. 1986).

the Connecticut Supreme Court refused to afford the defendant any relief despite a six month delay. It found that the six month delay in New Jersey had occurred merely because of a backlog due to official intransigence. Then, it specifically noted that the defendant had not been prejudiced. 554 A.2d 692. He had neither shown that his conditions in New Jersey during this time had been adversely affected nor that he was hurt in any way in the delay in bringing his case to trial in Connecticut.

In the present case, petitioner has less to complain about than did the defendant in Herring. The delay in the present case was, at worse, less than four months. Further, petitioner does not even speculate in any way whatsoever that he was in any way prejudiced. He is claiming nothing more than the Act was some how violated so that this Court will then dismiss the conviction. He has not even

claimed (let alone shown) that his prison conditions in Indiana were any worse for him because of this "delay" (if one even occurred). Further, he has not even alleged that his defense was in any way damaged by any such "delay" while he was in Indiana. Last, he has never even alleged that he has been prejudiced in his sentence, somehow losing out on a concurrent sentence.[5] As petitioner has not even in the least even speculated on any kind of prejudice whatsoever, especially because the IAD provides for no remedy for an Article III(c) violation, he is not entitled to a dismissal (especially

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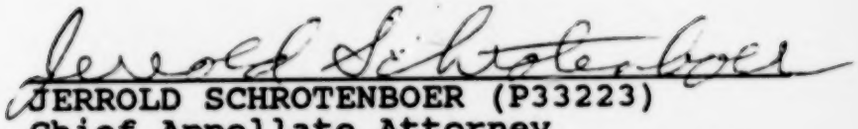
[5]Even if petitioner somehow was prejudiced on this last point, this Court could easily remedy the situation far short of dismissal by merely affording him extra credit for time served.

because the delay was at most, less than four months). No presently existing rule in this country supports such a draconian result. In fact, not a single court in the present case accepted it. Each considered the issue so insignificant that each did not even specifically explicitly address it.

Last, at the very least, should this Court in fact reverse, a discharge is not necessarily proper (at least yet). Respondent raised a waiver issue in the Michigan Supreme Court which was never addressed. By never demanding to be tried within 180 days, petitioner waived the IAD speedy trial provision. Williams v. State, 533 N.E.2d 1193 (Ind. 1989). If this Court should reverse, the proper procedure would be to remand back to the Michigan Supreme Court to consider the remaining issue.

WHEREFORE, respondent asks this Court to affirm.

Respectfully submitted,



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(1)

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In the Supreme Court of the United States

OCTOBER TERM, 1992

WILLIAM FEX, PETITIONER

v.

STATE OF MICHIGAN

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF MICHIGAN

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Article III(a) of the Interstate Agreement on Detainers provides that a prisoner against whom a detainer has been lodged shall be brought to trial within 180 days after "he shall have caused to be delivered to the prosecuting officer and the appropriate court" a request for disposition of the charges on which the detainer was based. The question presented is whether that 180-day period begins to run when the prosecuting officer and the appropriate court receive the prisoner's request for disposition of the charges, or when the prisoner first presents that request to the prison officials in the sending State for forwarding to the appropriate officials in the receiving State.

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Council of State Government

In the Supreme Court of the United States

OCTOBER TERM, 1992

No. 91-7873

WILLIAM FEX, PETITIONER

v.

STATE OF MICHIGAN

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF MICHIGAN

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF THE UNITED STATES

The Interstate Agreement on Detainers (IAD) provides a means for a prisoner being held in one jurisdiction (the sending State) to obtain a speedy resolution of charges pending against him in another jurisdiction (the receiving State). Article III(a) of the IAD provides that a prisoner against whom a detainer has been lodged "shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court * * * written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint." This case presents the question of

when the 180-day period prescribed in Article III(a) commences. The United States is a party to the IAD, see 18 U.S.C. App. § 2, at 702, and is subject to the 180-day provision in Article III(a), see *United States* v. *Mauro*, 436 U.S. 340, 354 (1978). The Court's decision in this case will therefore govern the time period within which state prisoners subject to federal detainers must be brought to trial on the federal charges against them. A decision in favor of petitioner would mean that the 180-day period for trial in federal cases would begin to run as soon as the state prisoner presented his request for trial to prison officials in the State where he was incarcerated, even if the request was not promptly forwarded to the appropriate federal officers. The United States therefore has a substantial interest in the outcome of this case.

STATUTORY PROVISIONS INVOLVED

Article III of the Interstate Agreement on Detainers, 18 U.S.C. App., at 702-703, provides, in pertinent part, as follows:

> (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided*, That, for good cause shown in open court, the prisoner or

> his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.
>
> (b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.
>
> (c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

Article V of the Interstate Agreement on Detainers, 18 U.S.C. App., at 703-704, provides, in pertinent part:

> (c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the

jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

STATEMENT

1. On February 29, 1988, petitioner was charged in Jackson County, Michigan, with armed robbery and possession of a firearm during a felony, in violation of Mich. Comp. Laws Ann. §§ 750.529 and 750.227b (West 1991). J.A. 2-4.[1] At the time the charges were brought, petitioner was in custody in Indiana, where he was being held in connection with other charges. The Michigan authorities lodged a detainer with the Indiana prison officials at the Westville Correctional Center, where petitioner was incarcerated. J.A. 40-41.

The prison officials at the Westville Correctional Center notified petitioner of the Michigan detainer on September 7, 1988. That same day, petitioner gave the Westville prison officials a written request for disposition of the Michigan charges. That request was submitted pursuant to Article III of the Interstate Agreement on Detainers, which provides that a prisoner against whom a detainer has been lodged may "make a request for final disposition of the indictment, information, or complaint on which the detainer is based." IAD, Art. III(c). The request is to be "given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody" of the prisoner in the State in which the

[1] Petitioner was also charged with assault with intent to murder, in violation of Mich. Comp. Laws Ann. § 750.82 (West 1991), but that charge was later dismissed. J.A. 41 n.1.

prisoner is incarcerated (the "sending State"). IAD, Art. III(b). The prison official must then "promptly forward" the request to the prosecutor and the appropriate court in the State that has lodged the detainer (the "receiving State"). *Ibid.* The request is to be accompanied by a notice of the place of imprisonment, an offer of temporary custody, and a certificate by prison officials describing the terms of the prisoner's incarceration. IAD, Arts. III(a), V(c).[2]

Petitioner's request, along with the other documents required by Article III of the IAD, was mailed two weeks later, on September 22, 1988, and received by the Michigan prosecutor on September 26, 1988. Petitioner's trial on the Michigan charges began on March 22, 1989. That date was 177 days after the prosecutor received petitioner's request, and 196 days after petitioner delivered the request to the Indiana prison officials. J.A. 41.

Before trial, petitioner moved to dismiss the charges on the ground that the Michigan trial was not held within the period prescribed in Article III(a). J.A. 41. That provision states that a prisoner against whom a detainer is lodged "shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court" in the receiving State "written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint." IAD, Art. III(a). In seeking dismissal, petitioner

[2] Both Indiana and Michigan are parties to the Interstate Agreement on Detainers. See Ind. Code Ann. § 35-33-10-4 (Burns 1985); Mich. Comp. Laws Ann. §§ 780.601 *et seq.* (West 1982).

relied on Article V(c) of the IAD, which provides that when an action on pending charges has "not [been] brought to trial within the [180-day] period," the court where the charges are pending "shall enter an order dismissing the same with prejudice." J.A. 32.

Petitioner argued that the 180-day period provided in Article III(a) was exceeded because the time began to run as of the date he submitted his request to the prison officials in Indiana. The State responded that under the terms of Article III(a) the 180-day period had not expired at the time of trial, because that period did not begin to run until the request was actually delivered to the prosecuting officials in Michigan.

The trial court agreed with the State's construction of the IAD and denied the motion. Petitioner was subsequently tried before a jury and found guilty on both counts of the indictment. J.A. 42. Petitioner was sentenced to a term of from 5 to 20 years' imprisonment for the armed robbery and a consecutive term of 2 years' imprisonment for the firearm offense. J.A. 42 n.2.

2. The Michigan Court of Appeals reversed, holding that the 180-day period in Article III(a) had been exceeded. J.A. 38-39. The court of appeals determined that "the commencement of the 180-day statutory period was triggered by [petitioner's] request for final disposition to the prison officials in this case." J.A. 39. Because it was undisputed that petitioner submitted his request to the Indiana prison officials more than 180 days before the trial began, the court held that the charges against petitioner had to be dismissed. *Ibid.*

3. The Michigan Supreme Court summarily reversed. J.A. 40-50.[3] The court determined that the 180-day period began to run on the date that the prosecutor received petitioner's request for disposition of the charges. The court explained that, under the terms of Article III(a), the 180-day period begins to run only after the prisoner "has caused *delivery*," and that "delivery" means "actual receipt." J.A. 43 (emphasis in original). The court rejected petitioner's contention that the 180-day period commenced when he submitted his request to the Indiana prison officials for forwarding to the appropriate Michigan officials. The court noted that, in contrast to Article III(a)'s reference to delivery, Article III(b) requires a prisoner to "give[]" or "send[]" his request to prison officials. J.A. 43. The court reasoned that "[s]imilar language, which would indicate that the 180-day period runs from the date the request is given or sent to prison authorities, could easily have been employed in Article III(a)" if the drafters had intended to adopt petitioner's interpretation. *Ibid.*

SUMMARY OF ARGUMENT

A. The 180-day period prescribed in Article III(a) of the IAD does not begin to run until the prisoner has "caused" his request "to be delivered" to the proper officials in the receiving State. The Michigan Supreme Court correctly concluded that, under the plain language of Article III(a), the 180-day period begins when the designated officials in the receiving

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[3] Two justices dissented on the ground that summary reversal was inappropriate. J.A. 48-50. Those justices expressed no view on the merits of petitioner's claim under the IAD.

State have actually received the prisoner's request. A request has not been "caused to be delivered" until delivery has occurred. As the Michigan Supreme Court determined—and petitioner does not dispute—"delivery" includes a requirement of actual receipt. Because petitioner was brought to trial within 180 days after the prosecutor received his request, the 180-day requirement in Article III(a) was satisfied.

B. No unfairness results from the state supreme court's interpretation of Article III(a). Under Article III(b), prison officials are required to forward a prisoner's request promptly. Accordingly, in most cases a prisoner's request will be received soon after he has furnished it to prison officials. Moreover, petitioner is wrong to suggest that the prosecutor in the receiving State is in a better position than the prisoner to prevent delays caused by prison officials in the sending State. The prosecutor ordinarily does not even learn of the existence of the request until after it has been forwarded to him; he obviously is powerless to prevent delays that have already occurred. The prisoner, in contrast, is in a position to press the prison officials to transmit his request promptly.

C. Petitioner errs in asserting that the case law supports his interpretation of the 180-day provision. The great majority of courts to address the issue have interpreted the provision to commence upon actual receipt of the prisoner's request by officials in the receiving State. The history of the IAD likewise supports that interpretation. The state law provisions on which the IAD was modeled expressly provided that the time for trial would not start running until actual "delivery" or "receipt" of the request for trial by the officials responsible for the prosecution. Article III(a) of the IAD should be construed to adopt the same rule.

ARGUMENT

THE 180-DAY PERIOD IN ARTICLE III OF THE IAD DOES NOT BEGIN TO RUN UNTIL OFFICIALS IN THE RECEIVING STATE HAVE RECEIVED THE PRISONER'S REQUEST FOR DISPOSITION OF THE CHARGES

A. The Text Of Article III(a) Makes Clear That Actual Receipt Is Required To Trigger The 180-Day Period

The Interstate Agreement on Detainers provides that, if the receiving State has filed a detainer with the sending State requesting custody of the prisoner when his sentence in the sending State has ended, the prisoner may request a prompt disposition of the charges in the receiving State. If the prisoner makes such a request, the receiving State must bring him to trial within 180 days "after he shall have caused" his request "to be delivered to the prosecuting officer and the appropriate court" of the receiving State.

The question in this case is whether the 180-day period after the prisoner has "caused to be delivered" a request begins when the prisoner submits his request to the prison officials of the sending State for forwarding to the receiving State, or when the request is received by the appropriate officials of the receiving State. In our view, the Michigan Supreme Court correctly concluded that the 180-day period in Article III(a) "runs from the time when the prisoner has caused *delivery*, which is actual receipt." J.A. 43 (emphasis in original).[4]

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[4] The record establishes that the Jackson County prosecutor received petitioner's request for disposition of the charges, as well as the other required documents, on September 26, 1988. J.A. 29. The parties have assumed that the Jackson County Court also received the required documents on that date. J.A. 33. Thus, this case does not involve the questions

By providing that the 180-day period does not begin to run until after the prisoner "shall have caused" his written request for disposition and other specified documents "to be delivered" to appropriate officials in the receiving State, Article III conditions the commencement of the 180-day period on (1) the prisoner's "causing" transmittal of the required documents and (2) the "delivery" of those documents to the proper officials. Petitioner does not dispute the Michigan Supreme Court's determination that "delivery" means "actual receipt," J.A. 43, nor could he do so. In common usage, "delivery" of physical property occurs only when the transferred property comes into the actual possession of the transferee. *Black's Law Dictionary* 385 (5th ed. 1979); see *Webster's Third New International Dictionary* 597 (1986) (defining "deliver" as to "give, transfer: yield possession or control of"). Thus, the language of Article III(a) makes clear that the 180-day period does not begin to run until the proper officials have actually received the required documents.

To be sure, Article III(a) recognizes that a prisoner need not personally deliver his written request; he need only have "caused" it "to be delivered." It is hardly surprising that the Agreement uses that formulation, since prisoners who are incarcerated in one jurisdiction are not often in a position to make direct, personal delivery of a request for a prompt trial to officials in another jurisdiction. Moreover, the formulation reflects that the IAD does

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of timing that arise when the prosecutor and court receive the documents on different dates, see *People* v. *Bielecki*, 588 P.2d 377, 378 (Colo. Ct. App. 1978), or when the required documents are not all received at the same time, see *Sweat* v. *Darr*, 684 P.2d 347 (Kan. 1984); *People* v. *Esposito*, 37 Misc. 2d 386, 396 (N.Y. County Ct. 1960).

not place on the prisoner the burden of notifying the prosecuting authorities of his request for prompt disposition of the charges; instead, it places that burden on the prison officials in the sending State and merely requires the prisoner to notify those officials of his desires. But the use of the phrase "shall have caused to be delivered" does not mean that the 180-day period is triggered once the prisoner has done his part to "cause" the delivery. The Agreement also requires the request "to be delivered." A request that is not delivered has not been "caused to be delivered." Thus, unsuccessful attempts at delivery do not satisfy the express requirements of Article III(a). See L. Abramson, *Criminal Detainers* 103-104 (1979) ("The phrase 'caused to be delivered' has no relevance to the time when the inmate transmits a request to the custodian.").[5]

Petitioner contends that the 180-day period in Article III(a) should begin to run "when the prisoner tenders the request for disposition to his warden's representative." Pet. Br. 8. He bases that contention on Article III(b), which states that "[t]he written notice and request for final disposition referred to in [Article III(a)] shall be given or sent by the prisoner to the warden * * * or other official having custody of him." Petitioner argues that the 180-day period should commence when the prisoner fulfills his obligation under Article III(b), since "service is complete" at that point. Pet. Br. 8.

Petitioner's argument ignores the text of Article III(a). First, Article III(a) requires the prisoner's

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[5] The use of the future perfect tense ("shall have caused to be delivered") underscores this point. That tense focuses on the completed delivery that has previously been caused, rather than on the act of causation that will later result in a delivery.

request "to be *delivered*," not "served" (emphasis added). While effective "service" of a document might occur prior to receipt under some circumstances, cf. *Fallen* v. *United States*, 378 U.S. 139, 142-144 (1964), "delivery" denotes actual receipt, see *Hagner* v. *United States*, 285 U.S. 427, 433 (1932) (indictment charging mail fraud adequately alleged actual receipt of fraudulent material). Since petitioner does not contend that the term "delivery" is ambiguous, it is of no consequence that the use of a different term might have given rise to an ambiguity.

As the Michigan Supreme Court recognized, Article III(a) could easily have been drafted to say exactly what petitioner claims it means. See Pet. App. 40. In Article III(b), the drafters provided that the prisoner should "give[]" or "sen[d]" his request for disposition to the prison officials in the sending State having custody of him. If the drafters had intended the 180-day period to be triggered by the prisoner's submission of his request to those same prison officials in the sending State, as petitioner contends, it would have been natural for the drafters to use the same language in the timing provision of Article III(a) that is used in Article III(b) to describe the manner in which the prisoner's request is to be processed. Thus, Article III(a) could simply have provided that the 180-day period is to run from the time the written notice "shall be given or sent by the prisoner" to the corrections officials in the sending State. Instead, however, the 180-day period was made to begin after the prisoner "shall have caused to be delivered [his request for prompt disposition of the charges against him] to the prosecuting officer and the appropriate court." The difference in language in the two subsections is significant. For "[w]hen

two parts of a provision * * * use different language to address the same or similar subject matter, a difference in meaning is assumed." *Harmelin* v. *Michigan*, 111 S. Ct. 2680, 2693 n.9 (1991) (opinion of Scalia, J.); accord *Crawford* v. *Burke*, 195 U.S. 176, 190 (1904); R. Dickerson, *The Interpretation and Application of Statutes* 224-225 (1975).

B. No Unfairness Results From Giving Effect To The Language In Article III(a) Requiring Actual Receipt By Officials In The Receiving State To Trigger The 180-Day Period

Petitioner contends that the 180-day period should commence when the prisoner furnishes his request to prison officials so that the prosecutor—and not the prisoner—will bear the consequences of any delay by prison officials in forwarding the prisoner's request. Pet. Br. 8, 20. That contention is based not on the language of Article III(a) but on petitioner's view of what "[f]airness requires." *Id.* at 8. Petitioner advances several arguments to support that view, but none justifies ignoring the language of Article III(a).[6]

1. Petitioner first asserts that, if the 180-day period in Article III(a) is interpreted to commence when the receiving State officials receive the prisoner's request, "there would be little incentive for offi-

[6] Petitioner contends, in the alternative, that the 180-day period should have commenced when he was sentenced in Indiana on unrelated charges. Pet. Br. 23-27. That contention is meritless. For one thing, petitioner failed to show that the Michigan detainer had been filed at the time of his sentencing in Indiana. See J.A. 28, 30. In any event, the 180-day provision in Article III(a) cannot conceivably be read to commence on the date the detainer is filed or the date of sentencing in the sending State.

cials in either sending or receiving states to transmit a request for disposition promptly." Pet. Br. 9. Thus, he contends (*id.* at 20) that the actual-receipt rule "frustrate[s]" the purpose of the IAD to encourage prompt disposition of outstanding charges, see IAD, Art. I. He asserts that his interpretation, in contrast, would further the purpose of the IAD by providing prosecutors and prison officials with an incentive to prevent undue delays in forwarding prisoners' requests.[7]

Adopting petitioner's interpretation would not be likely to reduce or prevent delays in forwarding prisoners' requests. Prison officials have a duty under the IAD to forward a prisoner's request promptly. IAD, Art. III(b). It is reasonable to assume that in most cases they will comply with that duty. Cf. *United States Dep't of State* v. *Ray*, 112 S. Ct. 541, 550 (1991) (official conduct is accorded a presumption of regularity); accord *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926). In any event, it is not self-evident that the threat of a dismissal sanction in the receiving State will put pressure on prison officials in the sending State to comply with

[7] Contrary to petitioner's assertion (Pet. Br. 18-19), the present case does not involve a "significant period[] of unexplained procrastination by the sending state authorities." Petitioner's request for disposition of the charges was mailed out two weeks after he gave it to prison officials. That is not an unreasonable amount of time. The prison officials had to prepare other documents to send along with petitioner's request, including written notice of the place of imprisonment, an offer of temporary custody, and a certificate describing the terms of petitioner's imprisonment. IAD, Arts. III(a), V(a); see *State* v. *Braswell*, 481 A.2d 413, 418 (Conn. 1984) (25-day delay not unreasonable), cert. denied, 469 U.S. 1112 (1985); *Thompson* v. *State*, 367 S.E.2d 247, 249 (Ga. Ct. App. 1988) (18-day delay not unreasonable).

the IAD, if those officials are inclined to disregard their responsibilities, since the consequences of dismissal will be visited entirely on another jurisdiction. In short, there is no reason to believe that prison officials need an incentive to meet their obligations under the IAD, or that if such an incentive is needed, petitioner's interpretation would provide one.

Contrary to petitioner's suggestion, the construction of the timing provision in Article III(a) does not create an anomalous gap in the enforcement mechanism of the IAD. At several points, the IAD relies on the good faith performance by prison officials and others of their obligations under the Agreement, as it imposes those obligations without specific accompanying sanctions to enforce them. For example, prison officials are required to inform the prisoner of the pendency of any detainers against him. If prison officials in the sending State wish to defeat the prisoner's interest in a speedy disposition of charges in another jurisdiction, they can do so by failing to notify the prisoner of the pendency of a detainer. The failure to notify the prisoner of the pendency of a detainer would violate the terms of the IAD, but the IAD does not provide any sanction for that violation. Instead, the IAD relies on the good faith performance by prison officials of their obligation to advise prisoners of the pendency of detainers against them. It is reasonable to assume that the drafters of the Agreement relied on the same assumption of good faith compliance with respect to the prison officials' obligation to forward prisoners' requests for prompt disposition of charges in other jurisdictions. It is not unreasonable to assume that prison officials in the sending State will comply with their obligations under the Agreement even where those obligations are not enforced by specific sanctions.

Rather than strengthening the IAD, petitioner's construction would spawn litigation over the timing of prisoners' requests to prison officials. If the 180-day period is deemed to run from the date that a prisoner submits his request to the prison officials in the sending State, the dismissal sanction would give a prisoner a strong incentive to claim that he submitted his request to the prison officials at some point long before the request was forwarded to the receiving State. Such claims would be difficult to rebut other than by a dated receipt signed by the prisoner; in addition, they would likely require a hearing in the receiving State that would in turn require the presence of prison officials from the sending State as witnesses to the date that the prisoner first submitted his request. Any marginal benefits of petitioner's construction in speeding resolution of charges on which detainers are based would thus be outweighed by the cumbersome proof problems that petitioner's construction would introduce into IAD proceedings.

2. Petitioner is also wrong in suggesting (Pet. Br. 8-9) that the prosecutor is in a better position than the prisoner to prevent a delay in forwarding the prisoner's request. The prosecutor normally does not even learn of the request until after it has been forwarded to him by prison officials in the sending State. At that point, the prosecutor obviously cannot prevent any delays in forwarding, because they will already have occurred. It thus does not matter that, under petitioner's interpretation, the prosecutor may have a greater incentive to prevent forwarding delays, since he has no ability to do so.

In contrast to the prosecutor, the prisoner knows when he has given a request for disposition to prison officials and is therefore in a better position to ensure that it is forwarded promptly. For example, the

prisoner can insist that he be provided with proof that his request has been mailed to the appropriate officials. See IAD, Art. III(b) (warden should send request "by registered or certified mail, return receipt requested"). Under petitioner's interpretation of Article III(a), however, a prisoner would have no incentive to take such steps. On the contrary, he would have an incentive to maximize the delay in forwarding the request to the receiving State, since longer delays would make it more likely that the prosecutor in the receiving State would be unable to bring the prisoner to trial within the 180-day period (measured from the date the prisoner gives his request to prison officials in the sending State). Thus, adoption of petitioner's interpretation could well lead to increased forwarding delays.

3. Petitioner next asserts that his construction of the timing provision of Article III(a) would seldom "prevent the just prosecution of a miscreant," because in most cases "[t]he prosecutor would lose no more than the few days it takes for [a prisoner's request] to be delivered." Pet. Br. 21. That assertion provides no basis for preferring petitioner's interpretation over that adopted by the Michigan Supreme Court. By the same reasoning, in most cases prisoners will experience no more than a few days of delay in being brought to trial if the 180-day period runs from the date of actual receipt. More importantly, while prisoners will rarely suffer any harm from such brief delays, the consequences for the prosecutor of a delay of a few days can mean the difference between obtaining a conviction and suffering complete dismissal of the charges with prejudice.[8]

[8] In federal prosecutions, dismissal of the charges may be with or without prejudice, depending on, among other fac-

4. Petitioner asserts, finally, that "[w]here there is a lengthy delay in delivery, or where the request for disposition is lost in the mail," the prosecutor may request a continuance pursuant to Article III(a). Pet. Br. 21. If petitioner means to suggest that a continuance would be justified in that situation, then petitioner's argument is self-defeating. It makes no sense to argue that the prosecutor should bear the consequences of a delay because the prosecutor can always avoid those consequences by seeking relief on a case-by-case basis.

The greater problem with petitioner's argument is that a prosecutor will not always be able to avoid dismissal of a case when prison officials unduly delay forwarding a prisoner's request. For example, if the prisoner's request is misplaced and more than 180 days pass after the prisoner submitted the request to prison officials in the sending State, the charges in the receiving State would be subject to dismissal even before the prosecutor receives notice of the prisoner's request and can seek a continuance.[9]

In sum, contrary to petitioner's suggestion, the construction of Article III(a) adopted by the Michigan Supreme Court does not defeat the purposes of the Interstate Agreement on Detainers. Article III(b) of the Agreement requires prison officials to forward

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tors, "[t]he seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of the agreement on detainers and on the administration of justice." 18 U.S.C. App. § 9, at 705. The statutory provision permitting dismissals without prejudice, however, does not apply to state prosecutions.

[9] Courts are divided on the question whether a continuance must be sought before the 180-day period expires. See L. Abramson, *supra*, at 105 (discussing cases).

a prisoner's request for disposition promptly. The prosecutor must then obtain custody of the defendant and arrange for a trial within 180 days after he receives that request. Absent an assumption of bad faith on the part of prison officials in the sending State, petitioner's construction of the timing provision in Article III would not reliably shorten the period within which prisoners are brought to trial. It would only increase the potential for gamesmanship and result in occasional dismissals of indictments because of delays that were not the fault of courts or prosecuting officials in the receiving State.

C. The History of the IAD and Case Law Construing It Support Interpreting Article III(a) to Require Actual Receipt To Trigger the 180-Day Period

This Court has suggested that the 180-day period in Article III(a) commences when the appropriate officials receive a prisoner's request, but it has never addressed the question directly. See *Carchman* v. *Nash*, 473 U.S. 716, 721 (1985).[10] Numerous lower

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[10] In *Nash* (473 U.S. at 721), the Court described the operation of the IAD as follows (emphasis added):

> Art. III requires the warden to inform the prisoner that a detainer has been lodged against him and that he may request final disposition of the indictment, information, or complaint upon which the detainer is based. If the prisoner makes such a request, the warden must forward it, [along with certain information about the prisoner's terms of imprisonment], to the appropriate prosecuting official and court of the receiving State. The authorities in the receiving State *then* must bring the prisoner to trial within 180 days, absent good cause shown, or the court must dismiss the indictment, information, or complaint with prejudice, and the detainer will cease to be of any force or effect.

See also S. Rep. No. 1356, 91st Cong., 2d Sess. 2 (1970) ("Any request is transmitted through the warden to the proper

federal courts and state courts have done so, however. And, contrary to petitioner's contention (Pet. Br. 8, 11), the great majority of courts have interpreted the 180-day period to commence upon actual receipt.[11]

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official in the other jurisdiction who *then* has 180 days to bring the prisoner to trial.") (emphasis added).

[11] See, *e.g.*, *Hall* v. *Florida*, 678 F. Supp. 858, 862 n.1 (M.D. Fla. 1987); *Young* v. *Mabry*, 471 F. Supp. 553, 561 (E.D. Ark. 1978), aff'd, 596 F.2d 339 (8th Cir.), cert. denied, 444 U.S. 853 (1979); *People* v. *Bielecki*, 588 P.2d 377, 378 (Colo. Ct. App. 1978); *State* v. *Braswell*, 481 A.2d 413, 417-418 (Conn. 1984); *Thompson* v. *State*, 367 S.E.2d 247, 249 (Ga. Ct. App. 1988); *Scrivener* v. *State*, 441 N.E.2d 954, 956 (Ind. 1982); *Sweat* v. *Darr*, 684 P.2d 347, 352-355 (Kan. 1984); *State* v. *White*, 673 P.2d 1106, 1110 (Kan. 1983); *State* v. *Walton*, 734 S.W.2d 502, 503 (Mo. 1987); *State* v. *Ternaku*, 383 A.2d 437, 439 (N.J. Super. Ct. App. Div.), certificate denied, 391 A.2d 494 (N.J. 1978); *State* v. *Moosey*, 504 A.2d 1001, 1003 (R.I. 1986); *State* v. *Moore*, 774 S.W.2d 590, 593-595 (Tenn. 1989); see also, *e.g.*, *United States* v. *Nesbitt*, 852 F.2d 1502, 1516 (7th Cir. 1988) (dictum endorsing actual-receipt rule), cert. denied, 488 U.S. 1015 (1989); *United States* v. *Espinoza*, 866 F.2d 1067, 1070 (9th Cir. 1988) (180-day period never commenced because proper officials were not properly notified of prisoner's request); *United States* v. *Ricketson*, 498 F.2d 367, 372 (7th Cir.) (dictum endorsing actual-receipt rule), cert. denied, 419 U.S. 965 (1974); *Beebe* v. *Vaughn*, 430 F. Supp. 1220, 1223 (D. Del. 1977) (same); *McCallum* v. *State*, 407 So. 2d 865, 869 (Ala. Crim. App. 1981) (same); *Rockmore* v. *State*, 519 P.2d 877 (Ariz. Ct. App. 1974) (180-day period ran from date prosecutor received defendant's request for speedy trial, even though request did not meet formal IAD requirements); *Spears* v. *State*, 660 S.W.2d 913, 919 (Ark. 1983) (dictum endorsing actual-receipt rule); *State* v. *Minnick*, 413 So. 2d 168, 169 (Fla. Dist. Ct. App. 1982) (same); *People* v. *Daily*, 860 N.E.2d 1131, 1136-1137 (Ill. Ct. App. 1977) (180-day period did not begin to run when proper notice never received). Contra *Commonwealth* v. *Martens*, 500 N.E.2d 282, 284-285 (Mass. 1986), cert. denied, 481 U.S. 1041 (1987); cf. *People* v. *Esposito*, 37 Misc. 2d 386, 396 (N.Y. County Ct. 1960).

The history of the IAD supports that interpretation.[12] The IAD was drafted by the Council of State Governments; it was first published in the Council's *Suggested State Legislation, Program for 1957* (1956). At the same time that the Council proposed an agreement to govern disposition of interstate detainers, it also proposed model legislation governing intrastate detainers. *Id.* at 77-78. Both the interstate and the intrastate proposals contained language virtually identical to the language in Article III(a) at issue here. See *id.* at 77 (intrastate proposal, Section 1, lines 4-9); *id.* at 81 (proposed Interstate Agreement, Art. III(a), lines 5-9). The Council stated that the intrastate proposal was "based substantially on statutes [then] operative in California and Oregon." *Id.* at 76. The timing provisions in both statutes were triggered by actual receipt by the prosecutor of the request for prompt disposition. The California statute required a prisoner to be brought to trial "within ninety days after [he] shall have delivered to said district attorney written notice of the place of his imprisonment and his desire to be brought to trial upon said indictment or information." Act of May 28, 1931, ch. 486, § 1, 1931 Cal. Stat. 1060; see also *People* v. *Godlewski*, 140 P.2d 381, 384 (Cal. 1943). The Oregon statute required trial "within 90 days of receipt [by the district attorney] of [the prisoner's] notice." Act of Apr. 29, 1955, ch. 387, § 2(1), 1955 Or. Laws 435; see also

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[12] This Court has reviewed the history of the IAD in prior decisions, see *Nash*, 473 U.S. at 726-734; *Cuyler* v. *Arams*, 449 U.S. 433, 447-449 (1981); *United States* v. *Mauro*, 436 U.S. 340, 349-356 (1978); accordingly, only the directly pertinent aspect of that history will be discussed here.

State v. *Liefke*, 789 P.2d 700, 701 (Or. Ct. App. 1990).

As we have explained, the IAD was drafted to require the prisoner to "cause" delivery, because the prisoner was not expected to deliver the required documents directly to officials in the receiving State. Instead, the prisoner was required to give his request for disposition to prison officials. In contrast, the California and Oregon models contemplated that prisoners would send their requests directly to the pertinent district attorneys. There is no evidence, however, that the IAD's drafters intended to alter the actual-receipt requirement that was clearly embodied in the state models. On the contrary, the close resemblance between the timing provisions in the state statutes and those in the Council's proposals suggests an intention to adopt that requirement. The drafting history of the Agreement is therefore entirely consistent with the most natural reading of the language of Article III(a), which uses the "delivery" of the request for prompt disposition to the appropriate officials in the receiving State as the trigger for the 180-day period for trial.

CONCLUSION

The judgment of the Supreme Court of Michigan should be affirmed.

Respectfully submitted.

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